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# federal register

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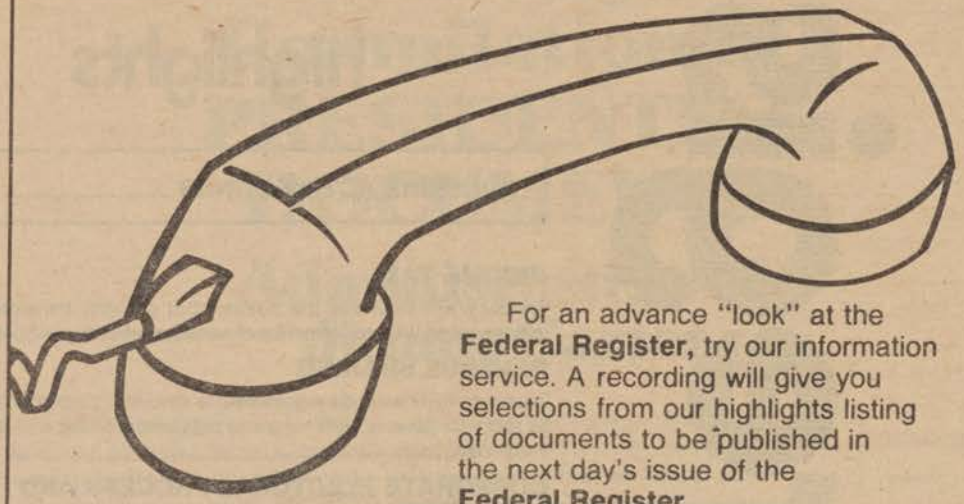

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# rules and regulations

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 1—AGRICULTURAL MARKETING SERVICE,[1] DEPARTMENT OF AGRICULTURE

## PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

### Fees for Federal Rice Inspection Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the fees for Federal rice inspection services. Rice inspection services are made available only upon request of an applicant. The revenue received from fees in recent months has exceeded the cost of providing the service, due, in part, to an increase in the volume of inspection and better utilization of inspection personnel. This action permits fees to equal, as nearly as possible, the cost of providing the service.

EFFECTIVE DATE: August 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Delbert Davis, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8601.

SUPPLEMENTARY INFORMATION: The adjustments in the fees include a change in the: (1) Commitment service hourly rates for 5 consecutive days per week, except holidays, from $16.40 to $14.80 between the hours of 6 a.m. and 6 p.m. and from $19.80 to $17.80 between the hours of 6 p.m. and 6 a.m. For holidays from $23.20 to $20.80.

(2) Noncommitment service hourly rates for Monday through Friday, except on holidays, from $20.80 to $18.80 between the hours of 6 a.m. and 6 p.m. and from $24 to $21.60 between the hours of 6 p.m. and 6 a.m. For holidays from $27.40 to $24.60.

(3) Inspection for quality fee per lot or sublot when performed at other than the point of sampling and the per sample fee for sample inspections from $12.10 to $10.90 for rough rice, $10.35 to $9.30 for brown rice for processing and $8.65 to $7.80 for milled rice.

(4) Per factor fee for any single factor for sample inspection from $3.40 to $3.10.

7 CFR 68.42c is revised to read as follows:

**§ 68.42c Fees for Federal rice inspection service.**

The following fees apply to the Federal rice inspection services specified below:

SERVICE AND FEE

(a) *Appeal inspection.* The applicable fee which would be assessed if the inspection was not an appeal: *Provided,* That no fee shall be assessed if it is found that there was a material error in the inspection from which an appeal was taken.

(b) *Commitment service.* If desired, an applicant may enter into an agreement with the Federal Grain Inspection Service for rice inspection services on a weekly basis, whereby the applicant agrees to pay for a minimum of 8 hours of service per day per person, for 5 consecutive days per week, and the Federal Grain Inspection Service agrees to make official inspection personnel available to perform such service for the applicant at reduced hourly rates: *Provided,* That if one of the 5 consecutive days per week falls on a holiday and inspection services are not needed the applicant shall not be charged.

To enter into a commitment agreement the applicant must give the Federal Grain Inspection Service 60 days written notice specifying the proposed effective date of the commitment: *Provided,* That a commitment may become effective prior to the proposed effective date by consent of both parties. To terminate a commitment the applicant must give the Federal Grain Inspection Service 60 days written notice specifying the date of termination.

The commitment service can be used by one applicant who guarantees to pay for the full 8 hours per day per person, 5 consecutive days per week, or by two or more applicants each guaranteeing to share the cost of the 8 hours per day per person: *Provided,* That each party to the commitment agrees to assume an even number of hours so that charges may be easily prorated.

Under a commitment service, the Federal Grain Inspection Service reserves the right to (1) determine the number of official inspection personnel needed to perform the service for a commitment applicant;

(2) Terminate a commitment agreement by giving the applicant 60 days written notice specifying the date of termination; and (3) temporarily reassign official inspection personnel from a commitment applicant when, in the opinion of the Director, the official inspection personnel are not needed to perform service for the commitment applicant. The commitment applicant in such instances would be credited with the number of commitment hours charged to other applicants or activities of the Federal Grain Inspection Service.

Hourly rates for commitment services shall begin when the official inspection personnel arrive at the point of service and end when they depart from the point of service, computed to the nearest quarter hour (less mealtime, if any). Hourly rates include the cost of travel and transportation to perform the service requested and the original and four copies of each certificate.

(1) Hourly rates per person per hour for commitment service, but see (d):

(i) For all work performed between the hours of 6 a.m. and 6 p.m., for 5 consecutive days per week, except on holidays [1]—$14.80.

(ii) For all work performed before 6 a.m. or after 6 p.m., for 5 consecutive days per week, and any time during the 2 remaining days per week, except on holidays [1]—$17.80.

(iii) For all work performed on holidays [1]—$20.80.

(2) Minimum fees for service performed under a commitment service agreement shall be on the basis of 8 hours per day per person, for 5 consecutive days per week, calculated at the hourly rate of $14.80: *Provided,* That if one of the 5 consecutive days per week falls on a holiday and inspection services are not needed, the applicant shall not be charged. Further, when the commitment applicant's hours are charged to other applicants or activities of the Federal Grain Inspection Service such hours shall not be included in the minimum fee.

(3) Standby time per person per hour shall be charged at the applicable hourly rate.

(c) Extra copies of certificates: Per copy—$1.00.

(d) Inspection for quality [2] charges per lot or sublot when performed other than at the point of sampling, but see (b) and (f):

(1) Rough rice—$10.90.

(2) Brown rice for processing—$9.30.

(3) Milled rice—$7.80.

(e) Interpretive line samples:

Per set—$50.00.

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[1] Including matters within the responsibility of the Federal Grain Inspection Service.

[1] Holiday shall mean the legal public holidays specified in paragraph (a) of section 6103, title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order: Provided, That if the specified legal public holidays falls on a Saturday, the preceding Friday shall be deemed to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be deemed to be the holiday.

[2] Includes kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the rice standards or instructions, whether singly or combined, except as provided for in paragraph (g).

NOTE.—The interpretive line samples illustrate the lower limit for milling degrees only. Interpretive line samples are available for examination at, or may be purchased from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, D.C. 20250.

Interpretive line sample are also available for examination at selected field offices of the Federal Grain Inspection Service. A list of the field offices may be obtained from the above address.

(f) Noncommitment service: A noncommitment service is provided for applicants who do not enter into a commitment service agreement with the Federal Grain Inspection Service. Service on a noncommitment basis will be furnished to applicants in the order in which requests are received, insofar as consistent with good management, efficiency, and economy. Precedence will be given, when necessary, to (1) commitment service participants, (2) requests for appeal service, (3) Requests by Govenment agencies, and (4) requests by regular users of the service. Hourly rates shall begin when the official inspection personnel arrive at the point of service and shall end when they depart from the point of service, computed to the nearest quarter hour (less mealtime, if any). Hourly rates include the cost of travel and transportation to perform the service requested and the original and 4 copies of each certificate.

(1) Hourly rates per person per hour for noncommitment service, but see (d);

(i) For all work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on holidays [1]—$18.80.

(ii) For all work performed before 6 a.m. or after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on holidays [1]—$21.60.

(iii) For all work performed on holidays [1]—$24.60.

(2) Minimum fee per person per callout or inspection visit for noncommitment service—2 hours at the applicable hourly rate.

(3) Standby time per person per hour shall be charged at the applicable hourly rate.

(g) Sample inspection:

(1) Inspection for quality [2] per sample:

(i) Rough Rice—$10.90.

(ii) Brown Rice for Processing—9.30.

(iii) Milled Rice—7.80.

(2) Factor analysis for any single factor: Per factor—3.10.

The need for reducing the service fees and the amounts thereof are dependent upon facts within the knowledge of the Federal Grain Inspection Service. Therefore, under the provisions of 5 U.S.C. 553, it is found that notice and other public procedures with respect to this amendment are impractical and unnecessary.

(Secs. 203, 205, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624.)

Done at Washington, D.C., on July 19, 1978.

L. E. BARTELT,
*Administrator.*

[FR Doc. 78-20468 Filed 7-21-78; 8:45 am]

[3410-02]

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

## PART 946—IRISH POTATOES GROWN IN WASHINGTON

### Expenses, Rate of Assessment, and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses of not more than $15,850 and establishes a rate of assessment of two-tenths ($0.002) cent per hundredweight of potatoes for the functioning of the State of Washington Potato Committee. The regulation enables the committee to collect assessments from first handlers on all assessable potatoes handled and to use the resulting funds for its expenses.

DATES: Effective July 1, 1978, through June 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to Marketing Order No. 946, as amended (7 CFR Part 946), regulating the handling of Irish potatoes grown in the State of Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the committee, established under the marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because this part requires that the rate of assessment for a particular fiscal period shall apply to all assessable potatoes from the beginning of such period. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

The regulation is as follows:

**§ 946.231 Expenses, rate of assessment, and carryover of unexpended funds.**

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending June 30, 1979, by the State of Washington Potato Committee for its maintenance and functioning and for such other purposes as the Secretary determines to be appropriate will amount to not more than $15,850.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be $0.002 per hundredweight, or equivalent quantity, of assessable potatoes handled by him as the first handler during the fiscal period, except that potatoes for livestock feed, charity, seed, canning, freezing and "other processing" as defined in the act shall be exempt.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve to the extent authorized in § 946.42(a).

(d) Terms used in this section shall have the same meaning as when used in the marketing agreement and this part.

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

Dated: July 19, 1978.

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

[FR Doc. 78-20471 Filed 7-21-78; 8:45 am]

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[6210-01]

## Title 12—Banks and Banking

## CHAPTER II—FEDERAL RESERVE SYSTEM

### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

## PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

### Changes in Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Change in discount rates.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit By Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates

and the general credit situation of the country.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3257.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357), part 201 is amended as set forth below:

1. Section 201.51 is amended to read as follows:

**§ 201.51 Advances and discounts for member banks under sections 13 and 13a.**

The rates for all advances and discounts under sections 13 and 13a of the Federal Reserve Act (except advances under the last paragraph of such section 13 to individuals, partnerships, or corporations other than member banks) are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 7¼ | July 3, 1978. |
| New York | 7¼ | Do. |
| Philadelphia | 7¼ | July 7, 1978. |
| Cleveland | 7¼ | July 3, 1978. |
| Richmond | 7¼ | Do. |
| Atlanta | 7¼ | July 10, 1978. |
| Chicago | 7¼ | July 3, 1978. |
| St. Louis | 7¼ | Do. |
| Minneapolis | 7¼ | Do. |
| Kansas City | 7¼ | July 7, 1978. |
| Dallas | 7¼ | July 3, 1978. |
| San Francisco | 7¼ | Do. |

2. Section 201.52 is amended to read as follows:

**§ 201.52 Advances to member banks under section 10(b).**

(a) The rates for advances to member banks under section 10(b) of the Federal Reserve Act are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 7¾ | July 3, 1978. |
| New York | 7¾ | Do. |
| Philadelphia | 7¾ | July 7, 1978. |
| Cleveland | 7¾ | July 3, 1978. |
| Richmond | 7¾ | Do. |
| Atlanta | 7¾ | July 10, 1978. |
| Chicago | 7¾ | July 3, 1978. |
| St. Louis | 7¾ | Do. |
| Minneapolis | 7¾ | Do. |
| Kansas City | 7¾ | July 7, 1978. |
| Dallas | 7¾ | July 3, 1978. |
| San Francisco | 7¾ | Do. |

(b) The rates for advances to member banks for prolonged periods and significant amounts under section 10(b) of the Federal Reserve Act and § 201.2(e)(2) of Regulation A are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 8¼ | July 3, 1978. |
| New York | 8¼ | Do. |
| Philadelphia | 8¼ | July 7, 1978. |
| Cleveland | 8¼ | July 3, 1978. |
| Richmond | 8¼ | Do. |
| Atlanta | 8¼ | July 10, 1978. |
| Chicago | 8¼ | July 3, 1978. |
| St. Louis | 8¼ | Do. |
| Minneapolis | 8¼ | Do. |
| Kansas City | 8¼ | July 7, 1978. |
| Dallas | 8¼ | July 3, 1978. |
| San Francisco | 8¼ | Do. |

3. Section 201.53 is amended to read as follows:

**§ 201.53 Advances to persons other than member banks.**

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 10¼ | July 3, 1978. |
| New York | 10¼ | Do. |
| Philadelphia | 10¼ | July 7, 1978. |
| Cleveland | 10¼ | July 3, 1978. |
| Richmond | 10¼ | Do. |
| Atlanta | 10¼ | July 10, 1978. |
| Chicago | 10¼ | July 3, 1978. |
| St. Louis | 10¼ | Do. |
| Minneapolis | 10¼ | Do. |
| Kansas City | 10¼ | July 7, 1978. |
| Dallas | 10¼ | July 3, 1978. |
| San Francisco | 10¼ | Do. |

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 357.)

By order of the Board of Governors, July 11, 1978.

THEODORE E. ALLISON,
*Secretary of the Board.*

[FR Doc. 78-20399 Filed 7-21-78; 8:45 am]

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[6210-01]

[Reg. O Docket No. R-0169]

## PART 215—LOANS TO EXECUTIVE OFFICERS OF MEMBER BANKS

### Credit Card Indebtedness

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction.

SUMMARY: This notice corrects a previous FEDERAL REGISTER document on credit card indebtedness that appeared at 43 FR 30039, July 13, 1978.

EFFECTIVE DATE: June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate General Counsel, 202-452-3274, or Jennifer J. Johnson, Attorney 202-452-3584, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

As an incident to the amendment published in FR Doc. 78-19323 appearing at page 30039 of the issue for Thursday, July 13, 1978, footnote 3 in § 215.5 is renumbered footnote 4.

Board of Governors of the Federal Reserve System, July 18, 1978.

THEODORE E. ALLISON,
*Secretary of the Board.*

[FR Doc. 78-20327 Filed 7-21-78; 8:45 am]

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[8025-01]

## Title 13—Business Credit and Assistance

## CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 13, Amdt. 23]

## PART 121—SMALL BUSINESS SIZE STANDARDS

### Definition of Small Business for the Purpose of Government Procurement for Protective Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule specifically defines a small business for the purpose of Government procurement for protective services. The rule was necessary to maintain an appropriate size standard for Government procurement because of the rapid growth in this industry. The effect of this proposal will be an increase in the number of firms eligible to bid on set-aside procurement.

EFFECTIVE DATE: September 22, 1978.

FOR FURTHER INFORMATION CONTACT:

John D. Whitmore, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, 202-653-6373.

SUPPLEMENTARY INFORMATION: On March 27, 1978, the SBA Size Standards Division published in the FEDERAL REGISTER (43 FR 12721) a proposal to adopt a $4 million average annual receipts size standard for pro-

tective services for purposes of Government procurement.

All of the comments received were favorable to an increase in the size standard for protective services. However, the majority of commentors thought that the standard should be higher than the $4 million originally proposed, at least comparable to the $4.5 million level used for custodial and janitorial services. These comments were based on the similar labor-intensive characteristics between the protective services and janitorial industries.

In view of the comments, we agree that these similar industries should carry the same standard of $4.5 million in average annual receipts. Accordingly, part 121 of chapter I, title 13, of the Code of Federal Regulations is amended by adding a new § 121.3-8(e)(17) to read as follows:

**§ 121.3-8 Definition of small business for Government procurement.**

* * * * *

(e) *Services.* * * *

(17) Any concern bidding on a contract for protective services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4.5 million.

Dated: July 17, 1978.

A. VERNON WEAVER,
*Administrator.*

[FR Doc. 78-20409 Filed 7-21-78; 8:45 am]

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[4910-13]

## Title 14—Aeronautics and Space

## CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket Number 77-CE-25]

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

### Designation of Transition Area—Superior, Nebr.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a transition area at Superior, Nebr., to provide controlled airspace for aircraft executing a new instrument approach procedure to the Superior, Nebr. Municipal Airport, which is based on the Mankato, Kans. VORTAC, a navigational aid.

EFFECTIVE DATE: September 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: A new instrument approach procedure is being established at the Superior, Nebr. Municipal Airport, which is based on the Mankato, Kans. VORTAC, a navigational aid. The establishment of an instrument approach procedure based on this navigational aid entails designation of a transition area at Superior, Nebr., at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

DRAFTING INFORMATION

The principal authors of this document are Gary W. Tucker, Operations, Procedures and Airspace Branch, Air Traffic Division, and John L. Fitzgerald, Jr., Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On pages 64131 and 64132 of the FEDERAL REGISTER dated December 22, 1977, the Federal Aviation Administration published a notice of proposed rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to designate a transition area at Superior, Nebr. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Three comments were received. The Air Transport Association of America (ATA) and the Aircraft Owners and Pilots Association (AOPA) offered no objection to the proposal. The Department of the Air Force objected to the proposal in that the new instrument approach procedure and the 700-foot transition area overlie an all weather low altitude route (AWLAR OB-31) which is used by the Air Force as a training route. The Air Force is concerned that implementation of the instrument approach procedure and transition area as proposed will interfere with both the usefulness of AWLAR OB-31 and the instrument approach procedure. After re-evaluating the Air Force's objection, the FAA considers it valid. Accordingly, a second instrument approach procedure to the Superior Municipal Airport has been developed and the 700-foot transition area designation has been slightly altered to accommodate this instrument approach. The second instrument approach procedure to Superior will be utilized when AWLAR OB-31 is in use. The Air Force has agreed that this action satisfies their objection and is a workable solution.

Since the changes to the Superior, Nebr. transition area designation which are different from those contained in the proposal are minor in nature, they impose no burden on any person, and, therefore, further notice and public procedure hereon are unnecessary.

Accordingly, subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended, effective 0901 G.m.t. Sept. 7, 1978, by adding the following transition area:

SUPERIOR, NEBR.

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Superior Municipal Airport (latitude 40°03'00" N., longitude 98°03'45" W.) and within 2.5 miles each side of the 021° radial of the Mankato (TKO) VORTAC, extending from the 5-mile radius 5 miles north of the airport and within 2.5 miles each side of the 024° radial of the Mankato (TKO) VORTAC, extending from the 5-mile radius to 5 miles south of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

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 Kansas City, Mo., on July 13, 1978.

C. R. MELUGIN, Jr.,
*Director, Central Region.*

[FR Doc. 78-20370 Filed 7-21-78; 8:45 am]

[6320-01]

## CHAPTER II—CIVIL AERONAUTICS BOARD

### SUBCHAPTER E—ORGANIZATION REGULATION

[Reg. OR-127; Amdt. No. 69 to Part 385]

## PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

### Applications By Direct Air Carriers for Exemptions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends authority delegated by the Board to the Director, Bureau of Pricing and Domestic Aviation, to clarify our intent to permit him not to act on applications by direct air carriers for exemptions, where the course of action is clear under current Board policies. This amendment is being adopted at the Board's own initiative in response to questions raised on the extent of the Director's authority.

DATES: Adopted: July 18, 1978, effective: July 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Patricia Lofts, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, phone 202-673-5082.

SUPPLEMENTARY INFORMATION: The Board has delegated authority to the Director, Bureau of Operating Rights (now, the Bureau of Pricing and Domestic Aviation), in section 385.13(b), to "approve, when no person disclosing a substantial interest objects, or deny applications of direct air carriers for exemptions from section 401 of the act, and from applicable regulations under this chapter." In the preamble to the rule (OR-123, effective November 22, 1977), we stated that the authority was to be used in cases where the "course of action is clear under current Board policies." However, neither the rule itself nor the preamble defines "substantial interest," and questions have been raised on the Director's use of his delegated authority in exemption cases where objections have been lodged. In order to remove the ambiguity surrounding the delegation proviso, "when no person disclosing a substantial interest objects," and to clarify our intent to give the Director the latitude to determine what interests in fact are substantial, based on the Board's current policies, and to use his delegated authority accordingly, we have decided to amend the rule to permit him to take action on section 401 exemption cases where the course of action is clear under current Board policies.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedures are unnecessary, and that the rule may become effective immediately.

Accordingly, the Board amends part 385 of its Organization Regulations (14 CFR Part 385) by revising paragraph 385.13(b) to read as follows:

**§ 385.13 Delegation to the Director, Bureau of Pricing and Domestic Aviation.**

* * * * *

(b) Grant or deny applications of direct air carriers for exemptions from section 401 of the act and from applicable regulations under this chapter, where the course of action is clear under current Board policies.

* * * * *

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 78-20470 Filed 7-21-78; 8:45 am]

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[6320-01]

### SUBCHAPTER F—POLICY STATEMENTS

[Reg. PS-78; Amdt. No. 57 to Part 399; Docket No. 33044

## PART 399—STATEMENTS OF GENERAL POLICY

### Applications By Direct Air Carriers for Exemptions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule sets forth the general policies of the Board governing its decisions on applications by direct air carriers for exemptions to perform charter services in air transportation. This rule is being adopted at the Board's own initiative to inform the public of its current, more liberal, exemption policies.

DATES: Adopted: July 18, 1978. Effective: July 18, 1978. Petition for Reconsideration Due: August 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Patricia Lofts, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, phone 202-673-5082.

SUPPLEMENTARY INFORMATION: The Board receives a large number of exemption applications to operate charter air transportation services, from both certificated supplemental carriers seeking to perform charter services in areas outside their certificate authority, and non-certificated carriers (e.g., air taxi operators, commercial operators) desiring to perform limited air transportation operations.[1] In the context of several recent cases,[2] we have had the opportunity to review and clarify our policies in deciding this type of request where objections to grant of the authority sought have been filed by other air carriers.

Rather than elaborate on these policies on a case by case basis, we have determined that it is preferable to formulate them in a new rule (399.21), in order to provide clear guidance to the public on the factors we consider significant in reaching decisions.

In the past, in the cases where an applicant's proposed charter service was of the type that could be authorized by exemption (i.e., the proposed operations were sufficiently limited in extent or affected by unusual circumstances so as to cause enforcement of the certificate provisions of section 401 to be unduly burdensome on it),[3] but the proposal was contested by a certificated airline already authorized and offering to perform the service, the Board usually determined whether grant of the exemption would be in the public interest[4] by balancing two principal factors. These were: (1) whether the applicant's proposed service would divert from the services of authorized certificated (incumbent) carriers, and thus, adversely affect them; and (2) whether denial of the exemption would deprive the public of service they desire and require. The standard applied in balancing these factors was the comparability of service test,[5] and the Board bore the re-

[1] For example, an air taxi operator might apply to use aircraft larger than permitted under part 298 of the Economic Regulations in specific charter services.

[2] Application of Music City International Airways, Inc., order 78-6-95, June 13, 1978, and Application of Britt Airlines, Inc., order 78-7-70.

[3] See section 416(b) of the Act.

[4] Or, in the language of section 416(b), whether enforcement of the certificate provisions would not be in the public interest.

[5] Basically, the comparability of service test employs a set of criteria to compare the service proposals of competing carriers in charter exemption cases where a carrier seeks authority to provide service in a market where it is not certificated. The comparison has two purposes: (1) To determine if the service of the unauthorized carrier is specifically needed, or whether there is adequate service already available in the market by certificated carriers; and (2) to assure that if the exemption is denied the

Footnotes continued on next page

sponsibility of determining whether competing services were comparable.

For a number of years, the Board gave greater weight to the availability of service from carriers already authorized—denying applications for exemption where incumbents offered "reasonably" comparable service—primarily out of a general concern that the exempted operator might compete with and divert from the services of the incumbent carrier. However, in our more recent decisions in cases involving applications for new or additional operating authority, we have given this consideration little or no weight: Only if diversion rises to a level where it threatens the ability of a carrier to fulfill its certificate obligations would we consider it as a significant factor to our decision.[6] This policy is consistent with our general objectives of encouraging and permitting healthy air carrier competition and the introduction of new service proposals, and, as reflected in the policy statement we are adopting today, we will apply it generally in our future decisions on charter exemption applications.

It is our further belief that the Board should not be in the business of weighing competing service proposals and deciding which airline meets the individualized needs of the chartering public. Purchasers of charter transportation logically base their choice of an airline on their own assessment of available services, including such factors as type and size of aircraft, quality of service, and price. They are clearly in a better position to decide which carrier best meets their needs than we are. Consequently, in deciding future exemption cases, we will give primary weight to the chartering public's own evaluation of its transportation needs and the carrier best suited to meet them, and we will not ordinarily give any weight to incumbent carriers' offers to provide "comparable" service.

We recognize that the policies we are adopting here affect significantly the first refusal privileges traditionally afforded incumbent carriers. We believe, however, that they are warranted in view of the Board's obligation to assure the public the service it needs and desires.[7] Moreover, the fact that a carrier is authorized in a particular market does not mean that it necessarily provides the public with the most responsive or economic service in each case, or that charterers should be required to use its services if they believe that another carrier can better meet their needs. It appears to us that the artificial protection in the form of the first refusal policy has dampened the incentive of incumbent carriers to provide the best service. Surely, if the incumbent's service were fully satisfactory, charterers would not seek the services of other carriers. In our view, termination of the first refusal privileges will spur more competitive service, ultimately benefiting the public.

For these reasons, we are adopting a new statement of general policy that the Board intends to rely, in charter exemption cases, on the chartering public's own assessment of its transportation needs, and not, under normal circumstances, to consider as relevant to our decision objections by air carriers to the exemption based on offers to perform the service themselves or on estimates of diversion.

This amendment to the policy statements will take the form of a final rule, and will become effective immediately. However, interested persons will be afforded a period of 20 days from the date of publication in the FEDERAL REGISTER within which to file petitions for reconsideration.

Accordingly, the Board amends part 399 (14 CFR Part 399) as follows:

1. Amend the Table of Contents of part 399 by adding a new § 399.21, which reads:

399.21 Charter exemptions (except military).

2. Amend Subpart B by adding a new § 399.21, which reads:

**§ 399.21 Charter exemptions (except military).**

In deciding applications for exemptions from section 401 of the Act by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

(Secs. 102, 204(a), and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 740, 743, and 771, 49 U.S.C. 1302, 1324, and 1386).

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 78-20469 Filed 7-21-78; 8:45 am]

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charterer will still receive service that operationally meets its needs. In determining comparability of service, the Board has compared the following factors: Proposed aircraft type and size, type of service (scheduled or charter, or combined scheduled and surface transportation), dates of service, and points proposed to be served.

[6] See *Greenville/Spartanburg-Washington/New York Subpart M Case*, order 77-10-1; *Atlanta-Charleston Competitive Nonstop Case*, order 78-2-114; *Oakland Service Case*, order 78-4-121; and *Music City International Airways, Inc.*, order 78-6-95.

[7] It is important to keep in mind that incumbent carriers do not have a first refusal right to all traffic in their authorized areas by virtue of their certification; rather, the Board in the past has afforded them a first refusal privilege as a matter of policy.

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[6351-01]

## Title 17—Commodity and Securities Exchanges

## CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

## PART 166—CUSTOMER PROTECTION RULES

### Adoption of Customer Protection Rules

AGENCY: Commodity Futures Trading Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is adopting a series of rules to provide greater protections to the customers of commodity firms. The rules will require commodity brokers to confirm all commodity futures trades effected for customers and provide each new customer with a disclosure statement containing prescribed language about the risk of loss inherent in trading commodity futures; expressly prohibit commodity brokers from engaging in unauthorized trading; and generally require commodity firms to supervise the handling of commodity accounts maintained with the firm and all other aspects of the firm's commodity business.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Frederick L. White, Special Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-632-5110.

SUPPLEMENTARY INFORMATION: On September 6, 1977 (42 FR 44742) the Commission proposed for comment a series of rules relating to commodity trading professionals. A number of these proposed rules were recommendations of the Commission's Advisory Committee on Commodity Futures Trading Professionals. The Commission received 196 comments on

the rules, 129 in writing and 67 at the hearings held by the Commission in Chicago, Des Moines, Dallas, Boston and Los Angeles.

After considering these comments, the Commission has decided to adopt, in a modified form, the proposed rules relating to supervision (proposed § 166.5), confirmation of commodity futures trades (proposed § 1.33b), authorization to trade (proposed § 166.4), and disclosure by futures commission merchants ("FCM's") regarding risk of loss (proposed § 1.55). As explained below, the Commission has decided not to adopt the proposed suitability rule (proposed § 166.2), the proposed churning rule (proposed § 166.3), the proposed rule relating to the handling of orders (proposed § 1.56), and the proposed rule banning the advertising of simulated or hypothetical commodity trading results (proposed § 166.6).

In adopting these rules, the Commission has, pursuant to section 15 of the Commodity Exchange act, as amended ("Act"), 7 U.S.C. 19 (1976), taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the objectives, policies and purposes of the Act. The Commission believes that the rules would not impose excessive burdens upon commodity professionals because the costs of compliance with the requirements are justified by the benefits the rules would provide.

### Confirmation of Commodity Futures Trades

The Commission is adopting, with minor revisions, the proposed requirement that FCM's promptly confirm all futures trades effected for customers. As proposed, the requirement was designated as § 1.33b; as adopted, the requirement is contained in new paragraph (a)(2) of existing § 1.33 ("Monthly statement for customer and record of customer's position in each future"), which will be expanded to include provisions of existing § 1.33a ("Controlled accounts"). Section 1.33a is being deleted—although the substance of its provisions is being transferred to § 1.33—in order to avoid possible confusion between these similarly-numbered rules and to combine in one rule the duties of FCM's to report transactions and positions to their customers.[1] Section 1.33 will be retitled, "Monthly and confirmation statements."

As noted in the release proposing these rules (42 FR 44746), the purpose of the confirmation requirement is to deter unauthorized trading by insuring that customers receive prompt notice of each trade. Before today's change, the Commission's rules required confirmation only of trades effected for controlled accounts. This requirement was contained in § 1.33a, which is being deleted, as noted above. Of course, FCM's must continue to confirm trades effected for controlled accounts, as these trades are generally covered by the new confirmation requirement. The provisions of § 1.33a that confirmations need not be sent to the individuals participating in an account carried in the name of a pool or combination of persons is incorporated in revised § 1.33, as shown in the table in footnote 1. (Proposed § 4.5 (42 FR 9275, Feb. 15, 1977) would require commodity pool operators to furnish monthly account statements to pool participants; if this requirement is adopted, the Commission will delete the current requirement that FCM's furnish monthly statements to pool participants.)

FCM's will not be required to confirm trades effected for accounts carried for persons who are contract market members or for omnibus accounts carried for other FCM's. Section 1.33 exempts FCM's from furnishing monthly statements to holders of these accounts, and it is appropriate to extend the exemption to confirmations.[2] See 39 FR 32981 (Sept. 10, 1974).

Where a member firm executes trades for the customer omnibus account of another FCM, the new confirmation provision will require the latter FCM—and not the member firm—to confirm to the appropriate customer each trade in the account. See paragraph (b) of new § 1.33.

In requiring FCM's to confirm trades "promptly," the Commission intends that confirmations should be sent no later than the close of business of the business day following the day of execution.

### Risk Disclosure Statement

Section 1.55 basically prohibits any FCM from opening a commodity futures account for any customer unless the FCM first provides the customer with a risk disclosure statement containing the language prescribed in paragraph (b) of § 1.55 and the FCM receives a signed acknowledgment from the customer that he received and understood the risk disclosure statement. The rule also requires the FCM to keep the acknowledgment in accordance with § 1.31, 17 CFR 1.31.

Under § 1.55 as proposed, the risk disclosure statement would have been required to be prepared by each FCM. Most of the commentators felt that if a disclosure document were needed the disclosure statement should be a uniform CFTC-prepared document because FCM-prepared documents might tend to be overly long and complex and thus ignored by many customers. The Commission agrees with this view and has therefore revised the rule to require FCM's to provide new customers with a document containing the brief language prescribed in the rule.

The other major difference between the rule as proposed and as adopted is the addition of the acknowledgment requirement, which is intended to facilitate the Commission's task of monitoring compliance by FCM's with the risk disclosure rule. While the acknowledgment requirement was not in the text of the rule as proposed, the Commission did request comment on this issue. Commentators objected to an acknowledgment requirement on the ground that it was unnecessary—because FCM's would find it in their own self-interest to keep a record of the customer's receipt of the disclosure statement—and would serve only to create unnecessary paperwork. The Commission views the acknowledgment requirement as appropriate in light of the few burdens it will impose and the risk that some FCM's will not

[1] The changes that will result from the Commission's merger of §§ 1.33 and 1.33a and the adoption of the general confirmation requirement can be summarized as follows:

| Before merger | After merger |
|---|---|
| § 1.33a(a)(1) (confirmation of trades for controlled accounts). | This requirement will be subsumed under § 1.33(a)(2). |
| § 1.33a(a)(2) (monthly statement of profit or loss on closed contracts). | § 1.33(c)(1). |
| § 1.33(a)b, first sentence (monthly statement to pool participants). | § 1.33(c)(2). |
| § 1.33(a)b, second sentence (confirmation need not be sent to pool participants). | This principle will be expressed in § 1.33(a)(2), second sentence. |
| § 1.33, clause (a) (monthly statement of open positions and ledger balance). | § 1.33(a)(1)(A). |
| § 1.33, clause (b) (monthly statement of unrealized profit or loss). | § 1.33(a)(1)(B). |
| § 1.33, proviso clause (exemption for certain accounts). | § 1.33(b). |
| § 1.33, clause (c) (monthly statement of property used to margin trades). | § 1.33(a)(1)(C). |
| § 1.33, last sentence (recordkeeping). | § 1.33(d). |

[2] While rule 1.33 also exempts FCM's from sending monthly statements to accounts containing only bona fide hedge positions, the Commission is not extending this exemption to the furnishing of confirmation statements because hedgers may need the protections that daily confirmations provide, whereas contract market members and FCM's are better able to fend for themselves.

voluntarily maintain a record of the customer's receipt of the statement.

Section 1.55 generally is intended to advise new customers of the substantial risk of loss inherent in trading commodity futures. As a CFTC advisory committee stated in its report to the Commission:

> Attracted to futures trading by low margins, high leverage and volatile prices, the new and inexperienced commodity trader often fails to realize that these same factors can lead to sharp losses as well as large and rapid gains. Accordingly, it is absolutely essential that commodity futures professionals who deal with the public be required to disclose to each new customer the substantial risk of loss that generally exists in futures trading. (Report of the Commodity Futures Trading Commission Advisory Committee on Commodity Futures Trading Professionals, August 5, 1976, p. 1 (CCH Commodity Futures L. Rep., report No. 29, part II, August 20, 1976).)

The disclosure statement language prescribed by the Commission is designed to accomplish this objective.

In addition, the statement is specifically intended to alert prospective customers to the possibility that futures trading may not be suitable for them in light of their financial condition. The statement provides:

> The risk of loss in trading commodity futures contracts can be substantial. You should therefore carefully consider whether such trading is suitable for you in light of your financial condition. (See proposed § 166.2(b).)

In this respect, the rule will address some of the concerns which led the Commission to propose a suitability rule (proposed rule 166.2), which the Commission is not adopting because the Commission was unable at this time to formulate meaningful standards of universal application. That rule would have prohibited Commission registrants from making commodity interest recommendations to, or effecting discretionary trades for, any customer unless the registrant had reason to believe the recommendation or trade was suitable for the customer in light of his financial condition. Numerous commentators stated that the risk disclosure document should advise customers to consider whether futures trading is suitable for them.

Several commentators objected to the proposed disclosure rule on the ground that a brief disclosure statement would not provide prospective customers with an adequate explanation of futures trading. This objection reflects a misunderstanding of the purposes of the proposed disclosure requirement. The statement was never meant to be an exhaustive explanation of the mechanics of the futures markets; rather it was always intended to alert customers to some of the risks inherent in futures trading. Accordingly, by furnishing the statement required by § 1.55, an FCM will not be relieved of any obligation it may have to make disclosures to customers concerning facts and circumstances of particular transactions.

Another objection to the disclosure requirement was that most prospective customers might simply ignore the document. The Commission is not persuaded that the possibility that some customers might ignore the risk disclosure statement is a basis not to afford other customers the protections the document seeks to provide.

A third objection was that the rule would prohibit FCM's from opening accounts for customers pursuant to telephone conversations. These commentators urged the Commission to revise the rule to permit the risk disclosure statement to be furnished to new customers within a specified number of days after the opening of the account. The Commission has decided not to revise the rule in this manner because it is precisely during the initial period when a new agreement is being solicited that the protections afforded by the disclosure statement should be most meaningful.

In proposing § 1.55, the Commission requested comments on whether the disclosure document should include statements regarding dual trading. Specifically, comments were requested on whether the document should disclose (1) whether the FCM dual trades (i.e., maintains a house account), (2) whether the FCM's associated persons and other employees are permitted to trade commodity futures for their own accounts, and (3) whether the floor brokers to whom the FCM transmits its customers' orders trade for their own accounts. Commentators generally opposed the notion of requiring disclosure of these matters, mainly on the ground that these disclosures would be confusing to the customer and are unnecessary since the customer is protected from abuses in this area by the Commission's regulations regarding dual trading. The Commission generally agrees with these views and has therefore decided not to require disclosures regarding dual trading.

Section 1.55 states that the risk disclosure statement shall contain only the language set out in the rule. Nonsubstantive additions may, of course, be made. For example, an FCM would be permitted to print its name on the document and include the acknowledgment as part of the document. However, the insertion of any new language in the text of the disclosure statement would be considered a substantive addition and the deletion of language from that text would also be prohibited.

### Authorization to Trade

Section 166.2 expressly prohibits unauthorized trading, which has already been held to be a violation of section 4b of the act.[3] Specifically, the rule provides that no FCM or associated person thereof may effect a commodity interest transaction for a customer unless the customer, before the transaction, either specifically authorized the FCM or associated person to effect the particular trade or gave the FCM or associated person written authorization to effect trades for the customer without his specific authorization.

Proposed as § 166.4, this rule also provided in effect that a trade would not be considered a valid discretionary trade for purposes of the rule unless (1) it was effected in accordance with the terms and conditions of the discretionary trading authorization and with all provisions of the act and the rules thereunder; (2) the authorization was set forth in a prominent fashion that was conspicuous to the customer; (3) the authorization defined precisely the terms of the discretionary authorization; and (4) the authorization, by its terms, terminated no later than 1 year after the 1st day of the authorization period and was not renewable except in writing. See paragraphs (b)(1)-(b)(4) of proposed § 166.4. After considering the comments, most of which were opposed to the provisions on the ground they were unduly burdensome, the Commission has decided to delete these four paragraphs.

Section 166.2 states that a trade will be considered specifically authorized if the customer directed the FCM to trade a specified amount of a specified contract on a specified day, even though the customer gave the FCM discretion as to price. That is, the rule would not require the FCM to obtain written discretionary trading authority from the customer in order to execute such an order. Almost all of the commentators on this issue recommended this result, stating that this was common trade practice, and the Commission agrees with those comments.

In proposing the rule, the Commission requested comment on the Advisory Committee's recommendation that the CFTC establish minimum equity requirements for discretionary accounts. Several exchanges have rules generally prohibiting their members from effecting trades for a discretionary account if the net equity in the account in exchange-traded commodities is less than a specified amount. Most of the commentators on this issue were opposed to the Com-

[3] E.g., Jeffrey L. Silverman, CFTC, No. 75-6 (May 5, 1976), affirmed, *Silverman* v. *CFTC*, 549 F. 2d (7th Cir. 1977). Thus, adoption of the rule will have no substantive effect on existing law.

mission's adoption of minimum equity requirements, some stating that the exchanges' rules serve no useful purpose. The Commission has decided not to adopt minimum equity requirements, believing that this matter is more appropriately addressed by the exchanges.[4]

### Supervision

Section 166.3 establishes a general supervision requirement for all CFTC registrants except associated persons who have no supervisory duties. Specifically, it requires these registrants to supervise diligently (1) the handling of all commodity interest accounts carried by the registrant and (2) all other activities of the registrant's partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to the firm's business as a Commission registrant. The basic purpose of the rule is to protect customers by ensuring that their dealings with the employees of Commission registrants will be reviewed by other officials in the firm.

As proposed, the supervision rule also established specific supervision requirements for FCM's. As explained below, although these requirements are not being adopted, most of them will be regarded as guidelines for FCM's.

Paragraph (b) of proposed § 166.3 required FCM's to provide for the supervision of each associated person whose duties are not wholly supervisory, and to maintain written procedures providing for the prior written approval by the designated supervisor of (i) the opening of each commodity account; (ii) the delegation by any customer of discretionary authority to an associated person under the supervisor's supervision; and (iii) all correspondence sent by any associated person under his supervision to a customer concerning the solicitation, acceptance or execution of commodity orders. Paragraph (b) also required these procedures to provide for (i) the written approval by the designated supervisor of each commodity trade effected pursuant to discretionary authority in an account under his supervision (the rule stating that the approval must be obtained on the day the transaction is effected); (ii) the frequent examination by the designated supervisor of the commodity accounts under his supervision to detect and prevent any violation of the act or rules thereunder, or of any bylaw, rule, regulation, or resolution of each contract market and registered futures association of which the FCM is a member; and (iii) the prompt review of all customer complaints, whether written or oral, concerning the handling of commodity accounts. In addition, paragraph (c) of proposed § 166.3 required each FCM that designated more than one supervisor under paragraph (b) to designate one or more partners or officers to supervise those supervisors.

The Commission has decided not to adopt these specific requirements at this time. Nevertheless, with two exceptions the Commission believes that, as a general matter, these requirements are a useful guideline as to the types of measures FCM's should adopt in order to supervise their employees properly. Those exceptions are that (i) prior approval of correspondence (proposed § 166.3(b)(2)(i)(C)) does not seem necessary—frequent review of such correspondence would be sufficient; and (ii) with respect to proposed § 166.3(c) (designation of a partner or officer to supervise the middle-level supervisors), it would be sufficient if the FCM designated a compliance manager (or similar employee) who is not a partner or officer. In this connection, the Commission wishes to emphasize that the responsibility for supervision must not "stop" at the branch or regional manager level, particularly where these managers also handle accounts.

In proposing the supervision rule, the Commission requested comments on whether it should require FCM's to investigate the background of their prospective associated persons. The Commission has decided to defer action on this issue until it completes a review of its own procedures for determining the fitness of applicants for associated person registration.

### Self-Regulation

In proposing the customer protection rules, the Commission also requested comments on whether it should require commodity self-regulatory organizations (contract markets and registered futures associations) to adopt customer protection rules that establish the safeguards contained in the Commission's customer protection rules. The Commission has decided not to adopt this requirement at this time because it believes that the effectiveness of the rules being adopted today should be assessed before it imposes a burden of this type.

### Proposed Rules That Will Not Be Adopted

The Commission has decided not to adopt the proposed churning and due diligence rules[5] because (1) those provisions would merely have codified principles that are implicit in the antifraud provisions of the Act and the CFTC's rules and (2) the benefits to be gained from codification are outweighed by the risk of unintentionally narrowing the scope of these provisions. The Commission may issue an interpretative release discussing the factors the Commission would consider in determining whether an account had been churned. The Commission is not adopting the proposed suitability rule (proposed § 166.2), for the reasons noted above, but may decide to adopt such a rule at a later time if meaningful standards can be developed.

The proposed amendment to § 1.35, 17 CFR 1.35 (1977)—which would have required FCM's to keep a record of (i) the financial condition of certain customers, (ii) grants of discretionary authority to associated persons and (iii) approvals by supervisors of discretionary trades—will not be adopted. The Commission's decision not to adopt the suitability rule and to delete the provisions relating to discretionary accounts from the supervision rule obviates the need for the maintenance of such records.

### Authority

In consideration of the foregoing and pursuant to the authority contained in sections 4b, 4c(b), 4g(1), 4*l*, 4*o*, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6b, 6c(b), 6g(1), 6*l*, 6*o*, and 12a(5) (1976), and section 217 of the Commodity Futures Trading Commission Act of 1974, 88 Stat. 1405, the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations to read as follows and creates a new part 166 of chapter I of title 17 of the Code of Federal Regulations as follows:

1. Section 1.33 is revised to read as follows:

**§ 1.33 Monthly and confirmation statements.**

(a) *General requirements.* Except as provided in paragraph (b) of this section, each futures commission merchant shall promptly furnish in writing directly to each customer—

(1) As of the close of the last business day of each calendar month or as of any regular monthly date selected: (i) A statement which clearly shows the open contracts with prices at which acquired, and the ledger balance carried for the customer's account; (ii) a statement which clearly shows the net unrealized profit or loss in all open contracts figured to the market; and (iii) a statement which

[4] One commentator urged the Commission to adopt a minimum equity rule if only to eliminate the confusion that currently exists in this area. The commentator pointed out that some exchanges have minimum equity rules while others do not and that the exchange rules are not uniform. The Commission believes that this problem can best be addressed by a registered futures association.

[5] The churning rule (proposed rule 166.3) basically stated that no Commission registrant may cause excessive transactions in a controled account. The due diligence rule (proposed rule 1.56) required each FCM and associated person to use "due diligence in the handling of customers' orders. * * *"

clearly shows any securities or other property which the customer has deposited with the futures commission merchant to margin, guarantee, or secure the account; and

(2) A confirmation of each commodity futures transaction caused to be executed by it for the customer. A commodity futures transaction that is caused to be executed for a commodity pool need be confirmed only to the operator of the commodity pool and not to the participants in the pool.

(b) *Exemptions.* The requirements of paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2) of this section shall not apply to the following: (1) Any account carried for a person who is a member of any contract market, (2) any omnibus account carried for another futures commission merchant, and (3) any account containing only bona fide hedge positions, except that confirmations must be furnished to accounts containing only bona fide hedge positions.

(c) *Controlled accounts.* (1) *Individual accounts.* With respect to any account controlled by any person other than the customer for whom such account is carried, each futures commission merchant shall clearly show on each monthly statement furnished as required by paragraph (a) of this section, or on an accompanying supplemental statement, the net profit or loss on all contracts closed since the date of the previous statement: *Provided, however,* That the provisions of this paragraph shall not apply to an account controlled by the spouse, parent, or child of the customer for whom such account is carried.

(2) *Pool or combination accounts.* With respect to any account carried for or in the name of a pool or combination of persons trading in commodities, each futures commission merchant shall furnish promptly to each individual participating in such pool or combination a copy of the monthly statement provided for by paragraph (a) of this section, and clearly show on such statement, or on an accompanying supplemental statement, the further information specified in paragraph (c)(1) of this section.

(d) *Recordkeeping.* Each futures commission merchant shall retain, in accordance with § 1.31, a copy of each monthly statement and confirmation required by this § 1.33 to be sent to customers.

**§ 1.33a [Deleted]**

2. Section 1.33a is deleted.

3. A new § 1.55 is added to read as follows:

**§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants.**

(a) No futures commission merchant may open a commodity futures account for a customer unless the futures commission merchant first (1) furnishes the customer with a separate written disclosure document containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions, e.g., captions) and (2) receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure document.

(b) The language set forth in the written disclosure document required by paragraph (a) of this section shall be as follows:

RISK DISCLOSURE STATEMENT

This statement is furnished to you because rule 1.55 of the Commodity Futures Trading Commission requires it.

The risk of loss in trading commodity futures contracts can be substantial. You should therefore carefully consider whether such trading is suitable for you in light of your financial condition. In considering whether to trade, you should be aware of the following:

(1) You may sustain a total loss of the initial margin funds and any additional funds that you deposit with your broker to establish or maintain a position in the commodity futures market. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the prescribed time, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

(2) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market makes a "limit move."

(3) Placing contingent orders, such as a "stop-loss" or "stop-limit" order, will not necessarily limit your losses to the intended amounts, since market conditions may make it impossible to execute such orders.

(4) A "spread" position may not be less risky than a simple "long" or "short" position.

(5) The high degree of leverage that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. The use of leverage can lead to large losses as well as gains.

This brief statement cannot, of course, disclose all the risks and other significant aspects of the commodity markets. You should therefore carefully study futures trading before you trade.

(c) The acknowledgement required by paragraph (a) of this section must be retained by the futures commission merchant in accordance with § 1.31.

4. A new part 166 is added to read as follows:

Sec.
166.1 Definitions.
166.2 Authorization to trade.
166.3 Supervision.

AUTHORITY: Secs. 4b, 4c(b), 4g(1), 4*l*, 4*o*, and 8a(5), Commodity Exchange Act, 7 U.S.C. 6b, 6c(b), 6g(1), 6*l*, 6*o*, and 12a(5) (1976), and sec. 217, Commodity Futures Trading Commission Act of 1974, 88 Stat. 1405.

**§ 166.1 Definitions**

(a) The term "Commission registrant" as used in this part means any person who is or is required to be registered with the Commission pursuant to the act or any rule, regulation, or order thereunder.

(b) The term "commodity interest" as used in this part means—

(1) Any contract for the purchase or sale of any commodity for future delivery, traded on or subject to the rules of a contract market;

(2) Any agreement or transaction subject to Commission regulation under section 4c(b) of the act; or

(3) Any contract or transaction subject to Commission regulation under section 217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a).

(c) The term "customer" as used in this part means any person trading, intending to trade, or receiving or seeking advice concerning any commodity interest, including any existing or prospective client or subscriber of a commodity trading advisor or existing or prospective participant in a commodity pool, but the term does not include a person who is acting in the capacity of a Commission registrant with respect to the trade.

(d) The term "commodity account" as used in this part means the account of a customer in which any commodity interest is, or is intended to be, traded.

**§ 166.2 Authorization to trade.**

No futures commission merchant or associated person may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account—

(a) Specifically authorized the futures commission merchant or associated person to effect the transaction (a transaction is "specifically authorized" if the customer specifies (1) the precise commodity interest to be purchased or sold, (2) the exact amount of the commodity interest to be purchased or sold, and (3) the date the transaction is to be effected); or

(b) Authorized in writing the futures commission merchant or associated person to effect transactions in commodity interests for the account without the customer's specific authorization.

**§ 166.3 Supervision.**

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling of all commodity interest accounts carried, operated, or

advised by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

* * * * *

Issued in Washington, D.C., on July 19, 1978.

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

[FR Doc. 78-20452 Filed 7-21-78; 8:45 am]

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[4210-01]

## Title 24—Housing and Urban Development

## CHAPTER X—FEDERAL INSURANCE ADMINISTRATION DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4160]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Town of Falkville, Morgan County, Ala.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Falkville, Morgan County, Ala. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Falkville, Ala.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Falkville, Morgan County, Ala., are available for review at Town Hall, Falkville, Ala.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Falkville, Ala.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Painter Branch | Fifth Ave | 592 |
| | U.S. Highway 31 | 595 |
| | MacArthur St | 604 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20088 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3097]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Bisbee, Cochise County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Bisbee, Cochise County, Ariz. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Bisbee, Cochise County, Ariz.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Bisbee, Cochise County, Ariz., are available for review at the Bisbee Municipal Building, 118 Arizona Street, Bisbee, Ariz.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Bisbee, Cochise County, Ariz.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, above mean sea level |
|---|---|---|
| Mule Gulch (Lowell Circle). | Downstream corporate limits. | 5,016 |
| | U.S. Highway No. 80 | 5,019 |
| | Douglas Rd | 5,059 |
| | South Pacific RR | 5,067 |
| Mule Gulch | Downstream corporate limits. | 5,309 |

| Source of flooding | Location | Elevation in feet, above mean sea level |
|---|---|---|
| | U.S. Highway No. 80 | 5,309 |
| | Corporate limits | 5,310 |
| | Confluence with Brewery Gulch. | 5,311 |
| | Inlet to 10 ftx12 ft concrete box culvert. | 5,340 |
| | Main St | 5,374 |
| | Outlet 660 ft concrete box culvert. | 5,381 |
| | Clawson Ave | 5,398 |
| | Inlet 660 ft concrete box culvert. | 5,405 |
| | Confluence of Quarry Canyon. | 5,416 |
| | Confluence of Stream "M". | 5,438 |
| | Garden Ave. 40 ft upstream of confluence of Stream "M". | 5,440 |
| | Garden Ave. 730 ft upstream of confluence of Stream "M". | 5,463 |
| | Gladys Ave | 5,495 |
| | Moon Ave | 5,524 |
| | Star Ave | 5,532 |
| | Main St | 5,540 |
| | Gentry Ave | 5,556 |
| | Main St | 5,572 |
| | Canyon Store | 5,585 |
| | Confluence of Wood Canyon and Morales Creek. | 5,587 |
| Morales Creek | Confluence with Mule Gulch. | 5,587 |
| | Wood Canyon Rd | 5,591 |
| | Main St | 5,596 |
| | U.S. Highway No. 80 | 5,633 |
| | West Blvd | 5,678 |
| | Corporate limits | 5,692 |
| Wood Canyon | Confluence with Mule Gulch. | 5,587 |
| | Corporate limits | 5,640 |
| Brewery Gulch | Church St | 5,311 |
| | Walsh Av | 5,333 |
| | Youngblood Hill Ave | 5,352 |
| | Corporate limits | 5,505 |
| Stream E-1 | Confluence with stream F-1. | 4,964 |
| | State Highway No. 92 | 4,997 |
| | Cochise Lane | 5,018 |
| | Corporate limits | 5,030 |
| Stream F-1 | Corporate limits | 4,873 |
| | Hereford Rd | 4,907 |
| | Santa Cruz Dr | 4,950 |
| | Confluence of stream E-1. | 4,964 |
| | State Highway No. 92 | 5,011 |
| | Corporate limits | 5,045 |
| Stream G-1 | Corporate limits | 4,917 |
| | Via Alegre | 4,939 |
| | Santa Cruz Dr | 4,944 |
| | Graham Dr | 4,957 |
| | Fort Huachuca Lane | 4,969 |
| | State Highway No. 92 | 4,977 |
| | Cochise Lane | 5,046 |
| | Corporate limits | 5,050 |
| Stream "X" | Corporate limits | 4,962 |
| | Confluence of stream "Y". | 4,962 |
| | "B" Ave | 4,971 |
| | Center Ave | 4,991 |
| | Corporate limits | 5,058 |
| | Corporate limits | 5,079 |
| | Oaklande St | 5,080 |
| | Hillside St | 5,083 |
| | State Highway No. 92 | 5,103 |
| | Czar Ave | 5,114 |
| | Neptune Ave | 5,130 |
| | Atlanta Ave | 5,151 |
| | Corporate limits | 5,172 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20089 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4058]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for Merced County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Merced County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Merced County, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Merced County, are available for review at County Administration Building, 2222 M Street, Merced, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5720, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Merced County, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community of from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Bear Creek, west of Merced City. | Crocker Dam (upstream side). | 158 |
| | U.S. Highway 99 | P163 |
| Bear Creek, east of Merced City. | McKee Rd. bridge | 183 |
| | Kirby Rd | 193 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20090 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-1022]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for the City of Mill Valley, Marin County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Mill Valley, Marin County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Mill Valley, Calif.

ADDRESSES: Maps and other information showing the detailed outlines

of the flood-prone areas and the final elevations for the city of Mill Valley, are available for review at City Hall, Mill Valley, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5720, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Mill Valley, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Arroyo Corte Madera Del Presidio Creek. | Corte Madera Ave | 155 |
| | King St | 140 |
| | Gardner St | 74 |
| | Camino Alto | 6 |
| Old Mill Creek | Cascade Dr. (900 ft downstream of confluence with Cascade Creek). | 153 |
| | Eugene St | 120 |
| | Ethel Dr | 72 |
| Warner Canyon | Manor Dr | 73 |
| | East Blithedale Ave | 38 |
| | Locust Ave | 16 |
| Reed Creek | Corporate limits | 12 |
| Sutton-Manor Creek. | Ashford Ave | 10 |
| | Roque Morales Dr | 6 |
| Ryan Creek | Camino Alto | 6 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 29, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20091 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4059]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Monte Sereno, Santa Clara County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Monte Sereno, Santa Clara County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Monte Sereno, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Monte Sereno, are available for review at office of the city administrator, 18011 Saratoga-Los Gatos Road, Monte Sereno, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Monte Sereno, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| San Tomas Aquino Creek. | Quito Rd., 200 ft. above Los Gatos-Monte Sereno corporate limits. | 375 |
| | Avon Lane | 389 |
| | Twin Creeks Rd | 410 |
| | Quito Rd., 1,300 ft. above Twin Creeks Rd. | 430 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20092 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4162]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Redlands, San Bernardino County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Redlands, San Bernardino County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood

elevations, for the city of Redlands, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Redlands, San Bernardino County, Calif., are available for review at City Hall, Redlands, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Redlands, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| The Zanja | Tennessee St.* | 1,265 |
| | New York St.* | 1,288 |
| | Texas St.* | 1,312 |
| | Ninth St.* | 1,383 |
| | Church St.* | 1,404 |
| | Division St.* | 1,424 |
| | University St.* | 1,444 |
| | Grove St.* | 1,477 |
| | Judson St.* | 1,500 |
| | Lincoln St.* | 1,529 |
| | Dearborn St.* | 1,554 |
| | Wabash St.* | 1,617 |
| San Timoteo Creek. | San Timoteo Canyon Rd. bridge*. | 1,295 |
| | San Timoteo Canyon Rd. at Southern Pacific RR.*. | 1,335 |
| Santa Ana Creek... | Mountain View Ave.* | 1,071 |
| | California St.* | 1,125 |
| | Alabama St.* | 1,188 |

*Upstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20093 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3819]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for Archuleta County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Archuleta County, Colo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Archuleta County, Colo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Archuleta County, Colo., are available for review at Archuleta County Courthouse Planning Office, Pagosa Springs, Colo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5720, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Archuleta County, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| San Juan River..... | U.S. Highway 160 | 7,308 |
| | Adrian Bridge | 7,345 |
| McCabe Creek ..... | 4 Mile Rd | 7,117 |
| North Fork..... | Confluence with McCabe Creek. | 7,114 |
| Rio Blanco River... | Bridge No. 1 | 6,855 |
| | Bridge No. 2* | 6,972 |
| | Bridge No. 3* | 6,984 |
| | Bridge No. 4* | 7,033 |
| | Bridge No. 5* | 7,099 |

*Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20094 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4165]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Town of Windsor Locks, Hartford County, Conn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Windsor Locks, Hartford County, Conn. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in

order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Windsor Locks, Hartford County, Conn.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Windsor Locks, are available for review at the Town Clerk's Office, Town Hall, 45 Church Street, Windsor Locks, Conn.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Windsor Locks, Hartford County, Conn.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Connecticut River. | Confluence of Waterworks Brooks. | 33 |
| | Just downstream of Route 140 bridge. | 34 |
| | At northern corporate limits. | 35 |
| Kettle Creek | At confluence with Connecticut River. | 34 |
| | Just upstream of Windsor Locks Canal. | 41 |
| | 1,080 ft upstream of Main St. | 42 |
| | 350 ft downstream of Center St. | 43 |
| | Just upstream of Center St. | 46 |
| | 60 ft upstream of Center St. | 47 |
| | 300 ft upstream of Center St. | 48 |
| | 350 ft upstream of Center St. | 49 |
| | 950 ft upstream of Center St. | 54 |
| | 1,700 ft upstream of Center St. | 61 |
| | 2,660 ft upstream of Center St. | 70 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20095 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3643]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for the City of Boynton Beach, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Boynton Beach, Palm Beach County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Boynton Beach, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Boynton Beach, Palm Beach County, Fla., are available for review at City Hall, 120 Northeast Second Avenue, Boynton Beach, Fla.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notices of the final determinations of flood elevations for the city of Boynton Beach, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Atlantic Ocean | Shoreline along Atlantic Ocean. | 7 |
| Lake Worth and Intracoastal Waterway. | Eastern end of Ocean Inlet Dr. | 7 |
| | Southeast 10th Ave. | 7 |
| C-16 Sub-basin | Northwest 22d Ave. (west end). | 11 |
| | Lake Terrace | 12 |
| | 23d Ave. (west end) | 13 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20096 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4166]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for the City of Palm Beach Gardens, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Palm Beach Gardens, Palm Beach County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Palm Beach Gardens, Fla.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Palm Beach Gardens, are available or review at City Hall, 10500 North Military Trail, Palm Beach Gardens, Fla.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Palm Beach Gardens, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Lake Worth | Intersection of Prosperity Farms Rd. and Idlewild Rd. | 7 |
| C-17 Canal | MacArthur Blvd | 12 |
| | South of State Route 809. | 13 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20097 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4167]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City and County of Honolulu, Hawaii

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city and county of Honolulu, Hawaii. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city and county of Honolulu, Hawaii.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city and county of Honolulu, Hawaii, are available for review at the City Clerk's Office, City Hall, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city and county of Honolulu, Hawaii.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community of from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Pahipahialua Stream. | 2,160 ft upstream from Kamehameha Highway. | 53 |
| | 510 ft upstream from Kamehameha Highway. | 19 |
| Hoolapa Stream | 365 ft upstream from Kamehameha Highway. | 35 |
| | At Kamehameha Highway (upstream side). | 21 |
| | 480 ft downstream from Kamehameha Highway. | 11 |
| Kalaeokahipa Stream. | 775 ft upstream from Kamehameha Highway. | 31 |
| | At Kamehameha Highway (upstream side). | 20 |
| | 150 ft downstream from Kamehameha Highway. | 16 |
| Ohia Stream | Along Plantation Rd. (830 ft west from Kamehameha Highway). | 23 |
| | At Kamehameha Highway (upstream side). | 11 |
| Ohia Stream East. | Kamehameha Highway (downstream side). | 11 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Kaipapau Stream.. | 2,300 ft upstream from Kamehameha Highway. | 67 |
| | At Kamehameha Highway (upstream. | 12 |
| Waipilopilo Stream. | 1,140 ft upstream from Kamehameha Highway. | 29 |
| | 350 ft upstream from Kamehameha Highway. | 11 |
| Hanahimoa Stream. | 1,260 ft upstream from Kamehameha Highway. | 31 |
| | 210 ft upstream from Kamehameha Highway. | 10 |
| Kaluanui Stream .. | 250 ft downstream from Plantation Rd. | 23 |
| Punaluu Stream.... | 2,900 ft upstream from Kamehameha Highway. | 22 |
| Kahana Stream..... | 5,720 ft upstream from Kamehameha Highway. | 20 |
| | At Kamehameha Highway (upstream). | 9 |
| Kaaawa Stream..... | 990 ft upstream from Kamehameha Highway. | 15 |
| Waikane Stream ... | 3,060 ft upstream from Kamehameha Highway. | 50 |
| | Kamehameha Highway (upstream). | 15 |
| | Confluence with Kaneohe Bay. | 8 |
| Waiahole Stream .. | 2,610 ft upstream from Kamehameha Highway (upstream). | 35 |
| | At Kamehameha Highway (upstream). | 14 |
| Heeia Stream..... | Alaloa St. (upstream) ..... | 54 |
| | At Kamehameha Highway (upstream. | 4 |
| Keaahala Stream.. | Anoi Rd. (downstream).. | 114 |
| | Pahia Rd. (upstream)..... | 98 |
| | Private road (upstream) 880 ft downstream from Pahia Rd. | 85 |
| | Kamehameha Highway (upstream). | 78 |
| | Wailele Rd. (upstream).. | 39 |
| | Downstream 130 ft ... | 10 |
| Kaneohe Stream... | Kamehameha Highway (upstream 75 ft). | 47 |
| | At eastern end of Holowai St. | 8 |
| Hamooalii Stream. | Luluku Rd. (upstream)... | 111 |
| | Likelike Highway (upstream). | 110 |
| | 150 ft downstream of Likelike Highway. | 74 |
| Kawa Stream..... | 1,220 ft upstream from Namoku St. | 98 |
| | Namoku St. (upstream).. | 76 |
| | Confluence of tributary to Kawa Stream. | 60 |
| | 740 ft downstream from Namoku St. Kaneohe Bay Dr. (upstream). | 34 |
| Tributary to Kawa Stream. | 15 ft downstream from Mukulele Dr. | 86 |
| Waimanalo Stream. | 4,030 ft upstream from Kalanianaole Highway. | 73 |
| | Kalanianaole Highway (upstream). | 24 |
| | Tinker Rd. (upstream) ... | 12 |
| Waimanalo Streams, Stream A. | Kakaina St. (upstream).. | 120 |
| | Mahailua St. (upstream) | 66 |
| | 25 ft downstream of Mahailua St. | 58 |
| | Confluence of Stream B. | 35 |
| | Confluence with Waimanalo Stream. | 16 |
| | Kalanianaole Highway (upstream). | 14 |
| Waimanalo Streams, Stream B. | 40 ft downstream of Waikupanaha St. | 119 |
| | Kakaina St. (upstream).. | 44 |
| Waimanalo Streams, Stream C. | 100 ft downstream of Waikupanaha St. | 119 |
| | Mokulama St. (upstream). | 54 |
| | Hihimanu St. (upstream). | 33 |
| Waimanalo Streams, Stream D. | 50 ft downstream of Waikupanaha St. | 125 |
| | Lahiki St. (upstream) ..... | 97 |
| | Makakaio St. (upstream). | 71 |
| | Downstream Lahiki St ... | 45 |
| | Hihimanu St. (upstream). | 31 |
| Waimanalo Streams, Inoaole Stream. | 2,280 ft upstream from Hihimanu St. | 60 |
| | Hihimanu St. (upstream). | 21 |
| | Kalanianaole Highway (upstream). | 14 |
| | Hughes Rd. (upstream).. | 14 |
| Wailupe Stream .... | Confluence of Kului Stream. | 124 |
| | Ani St. (upstream)..... | 118 |
| | Hind Dr. (upstream) ..... | 34 |
| | Kalanianaole Highway (upstream). | 7 |
| Kului Stream..... | 1,138 ft upstream from Hindiuka Dr. | 252 |
| | Hindiuka Dr. (upstream). | 135 |
| Waialae-Iki Stream. | 1,140 ft upstream from Kalanianaole Highway. | 67 |
| | Kalanianaole Highway (upstream). | 18 |
| | Waiholo St. (upstream).. | 13 |
| Kapakahi Stream . | 1,565 ft upstream from Halekoa Dr. | 206 |
| | Halekoa Dr. (upstream). | 124 |
| | Malia St. (upstream)..... | 67 |
| | Alikoa St.(upstream) ..... | 39 |
| | Kalanianaole Highway (upstream). | 33 |
| | Confluence of Waialae-Nui Stream. | 24 |
| | Kahala Ave. (upstream). | 6 |
| Waialae-Nui Stream. | 550 ft upstream from Malia St. | 80 |
| | Malia St. (upstream)..... | 60 |
| | Interstate H-1 Freeway (upstream). | 25 |
| Waialae Major Drain. | 50 ft downstream of Interstate H-1 Freeway. | 46 |
| | Hunakai St. (upstream).. | 45 |
| | Pueo St. (upstream)..... | 17 |
| | Kilauea Ave. (upstream) | 16 |
| Kahili Stream..... | King St. (downstream)... | 43 |
| Moanalua Stream, lower. | Kikowaena St. (upstream). | 11 |
| | Kamehameha Highway (upstream). | 7 |
| Moanalua Stream, upper. | Northernmost Ala Aolani St. (upstream). | 239 |
| | Ala Aolani St. (upstream) 100 ft above Ala Lani St. | 190 |
| | Ala Aoloa Loop (upstream). | 167 |
| | Moanalua Lakeside access Rd. | 87 |
| East Makaha Stream. | Kaulawaha Rd. (upstream). | 44 |
| | 2,340 ft downstream from Kaulawaha Rd. | 13 |
| West Makaha Stream. | Kili Dr. (upstream)..... | 36 |
| | 1,020 ft upstream from Farrington Highway. | 14 |
| Kiikii Stream..... | Waialua Rd. (upstream). | 14 |
| | 330 ft downstream from Waialua Rd. | 11 |
| Kaukonahua Stream. | 10 ft upstream of southernmost Cane Haul Rd. | 44 |
| | Cane Haul Rd. (upstream). | 30 |
| | Farrington Highway (upstream). | 20 |
| Poamoho Stream .. | 730 ft upstream from Kaukonahua Rd. | 30 |
| | Kaukonahua Rd. (upstream). | 28 |
| | Confluence with Kiikii Stream. | 16 |
| Paukauila Stream . | 900 ft upstream from Halewa Rd. | 8 |
| Helemano Stream . | 3,510 ft upstream from Kamehameha Highway. | 27 |
| | Kamehameha Highway (upstream). | 14 |
| Opaeula Stream .... | Twin Bridge Rd. (upstream). | 20 |
| Anahulu River..... | 930 ft upstream from Cane Haul Rd. | 22 |
| | Cane Haul Rd. (upstream). | 16 |
| Waimea River..... | 2,540 ft upstream from Kamehameha Highway. | 27 |
| | 2,040 ft upstream from Kamehameha Highway. | 20 |
| Paumalu Stream ... | 2,085 ft upstream from Kamehameha Highway. | 79 |
| | 285 ft upstream from Kamehameha Highway. | 18 |
| Pacific Ocean (Tsunami Wave). | Along Kakipi Pl., 90 ft north of intersection with Kamehameha Highway. | 12 |
| | Intersection of Kuilima Driveway and East Kuilima Pl. | 8 |
| | Along Airport Rd., 1,600 ft north of northernmost branch of Plantation Rd. | 12 |
| | Easternmost intersection of Kamehameha Highway and Wahinepee St. | 13 |
| | Along Plantation Rd., 100 ft south of landing strip. | 12 |
| | Along Pakelo Pl., 125 ft east of Kamehameha Highway. | 13 |
| | Along Kaupau Pl., 200 ft northeast of Kamehameha Highway. | 10 |
| | Along Kawaipuna St., 500 ft west of Kamehameha Highway. | 26 |
| | Along Imua Pl., 600 ft west of Kamehameha Highway. | 15 |
| | Along Hauula Homestead Rd., 75 ft west of westernmost intersection of Hauula Homestead Rd. and Kamehameha Highway. | 10 |
| | Along Hauula Homestead Rd., 100 ft south of easternmost intersection of Kamehameha Highway and Hauula Homestead Rd. | 10 |
| | Intersection of Pokiwai Pl. and Pokiwai Way. | 10 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| | Along Punaluu Valley Rd., 80 ft west of Kamehameha Highway. | 13 |
| | Along Punaluu Valley Rd., 600 ft west of Kamehameha Highway. | 8 |
| | Intersection of Kamehameha Highway and Hilaki Rd. | 14 |
| | Intersection of Kamehameha Highway and Kaawa Pl. | 13 |
| | Along Perimeter Rd., 850 ft north of Summer Rd. | 10 |
| | Along Moses St., 350 ft east of Cochran St. | 14 |
| | Intersection of Ilikai St. and Milokai St. | 6 |
| | Along Paiko St., 160 ft south of Kalanianaole Highway. | 1 |
| | Intersection of Keahole St. and Halanianaole Highway. | 8 |
| | Along Kalanianaole Highway, 500 ft east of Kealahou St. | 24 |
| | Along Pueo St., 400 ft southeast of Kahala Ave. | 8 |
| | Intersection of Kalakaua Ave. and Ohua Ave. | 6 |
| | Along Paoa Pl., 500 ft west of Kalia Rd. | 4 |
| | Along Paoa Pl., 800 ft west of Kalia Rd. | 8 |
| | Along Ala Moana Park Dr., 800 ft from westernmost intersection with Ala Moana Rd. | 5 |
| | Along Sand Island access road, 300 ft north of Mokauea St. | 5 |
| | Along PaPa Dr., 300 ft south of Papipi Rd. | 8 |
| | Along Ewa Beach Rd., 2,000 ft east of Kilaha St. | 4 |
| | Along Coral Sea Rd., 1,200 ft southwest of National Bay St. | 8 |
| | Along Olai St., 1,900 ft west of Hanun St. | 11 |
| | Intersection of Laumania Ave and Keaulana Ave. | 16 |
| | Intersection of Lualualei Naval Rd. and Farrington Highway. | 17 |
| | Along Hakimo Rd., 120 ft northeast of Farrington Highway. | 14 |
| | Intersection of Hookele St. and Farrington Highway. | 16 |
| | Intersection of Kimo St. and Farrington Highway. | 14 |
| | Along Hila St., 500 ft east of Farrington Highway. | 9 |
| | Intersection of Mila Kami St. and Farrington Highway. | 16 |
| | Along Mila Kami St., 600 ft east of Farrington Highway. | 9 |
| | Along Quarry Rd., 200 ft east of Farrington Highway. | 17 |
| | Intersection of Alta St. and Pokai Bay St. | 18 |
| | Intersection of Waianae Valley Rd. and Farrington Highway. | 10 |
| | Along Kanapua Pl | 10 |
| | Along Kaupuni Pl | 14 |
| | Along Orange St., 180 ft north of Farrington Highway. | 14 |
| | Along Makau St., 400 ft northwest of southernmost Lawaia St. | 14 |
| | Along Farrington Highway, 700 ft west of Laau Paina Pl. | 12 |
| | Along Apuhihi St., 325 ft north of Aweoweo St. | 17 |
| | Intersection of Waialua Beach Rd. and Puuiki St. | 15 |
| | Intersection of Kahaone Loop and Kahaone Pl. | 18 |
| | Along Cane Haul Rd., 1,000 ft east of Waialua Beach Rd. | 15 |
| | Intersection of Cane Haul Rd. and Haleiwa Rd. | 11 |
| | Intersection of Kaiaka St. and Pikai St. | 20 |
| | Along Nalimu Rd., 350 ft south of Haleiwa Rd. | 17 |
| | Intersection of Lokoea Pl. and Kamehameha Highway. | 17 |
| | Intersection of Kahalewa Pl. and Kamehameha Highway. | 15 |
| | Along Kawaloa Dr., 50 ft east of Kamehameha Highway. | 19 |
| | Intersection of Punalau Pl. and Kamehameha Highway. | 21 |
| | Northernmost intersection of KeWaena Rd. and Kamehameha Highway. | 16 |
| | Intersection of Huelo St. and Kahauola St. | 20 |
| | Along Kaunala St., 200 ft south of Kamehameha Highway. | 23 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: July 10, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20098 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-3950]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Bonner Springs, Wyandotte County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Bonner Springs, Wyandotte County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Bonner Springs, Wyandotte County, Kans.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Bonner Springs are available for review at the City Hall, 205 East Second, Bonner Springs, Kans.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for city of Bonner Springs, Wyandotte County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received

from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Kansas River | 1.25 mi downstream of Highway 7. | 770 |
| | Just upstream of Highway 7. | 771 |
| | 2,600 ft upstream of Highway 7. | 772 |
| | Just upstream of the Atchison, Topeka, & Santa Fe RR. | 775 |
| | 0.95 mi upstream of Atchison, Topeka, & Santa Fe RR. | 778 |
| East Mission Creek. | Lake of the Forest | 788 |
| | Just upstream of bridge at upstream end of Lake of the Forest. | 809 |
| | 2,600 ft upstream of bridge at upstream end of Lake of the Forest. | 809 |
| | 3,700 ft upstream of bridge at upstream end of Lake of the Forest. | 824 |
| | 6,850 ft upstream of bridge at upstream end of Lake of the Forest. | 854 |
| West Mission Creek. | 2,800 ft downstream of 118th St. | 773 |
| | Just upstream of 118th St. | 775 |
| | Just downstream of 122d St. | 779 |
| | 50 ft downstream of Metropolitan Ave. | 793 |
| | 50 ft upstream of Metropolitan Ave. | 800 |
| | 1,900 ft upstream of Metropolitan Ave. | 804 |
| | 50 ft downstream of Stevenson Bridge. | 824 |
| | 50 ft upstream of Stevenson Bridge. | 830 |
| | 1,750 ft upstream of Stevenson Bridge. | 844 |
| Spring Creek | At confluence with Wolf Creek. | 776 |
| | 75 ft downstream of 2d St. | 776 |
| | 50 ft upstream of 2d St. | 784 |
| | 700 ft upstream of 2d St. | 784 |
| | 75 ft upstream of Kump Ave. | 802 |
| | 50 ft downstream of Springdale Ave. | 802 |
| | Just upstream of Springdale Ave. | 804 |
| | 700 ft upstream of Springdale Ave. | 804 |
| | 125 ft downstream of Morse Ave. | 815 |
| | Just upstream of Morse Ave. | 819 |
| | 1,250 ft upstream of Morse Ave. | 827 |
| | 825 ft downstream of Lakewood Dr. | 849 |
| | Just upstream of Lakewood Dr. | 856 |
| Wolf Creek | At mouth | 776 |
| | 300 ft upstream of Loring Lane. | 776 |
| | Just upstream of Wooden Ave. | 781 |
| | 50 ft downstream of Kump Ave. | 784 |
| | 150 ft upstream of Kump Ave. | 791 |
| | At western corporate limits. | 792 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20099 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4171]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Chanute, Neosho County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Chanute, Neosho County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Chanute, Neosho County, Kans.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the city of Chanute are available for review at the City Hall, Chanute, Kans.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Chanute, Neosho County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Little Turkey River. | At Katy Rd | 927 |
| | At Atchinson Topeka & Santa Fe RR near Katy Rd. | 928 |
| | 2120 ft downstream of Santa Fe Lake Dam. | 930 |
| | 760 ft downstream of Santa Fe Lake Dam. | 932 |
| | U.S. Highway bridge 169 | 933 |
| | Santa Fe Lake | 944 |
| Chanute Drain | East corporate limit | 917 |
| | 80 ft downstream of Central Ave. | 919 |
| | 185 ft downstream of Evergreen Ave. | 922 |
| | 50 ft downstream of Evergreen Ave. | 923 |
| | 110 ft downstream of Highland Ave. | 924 |
| | 80 ft downstream of Lincoln Ave. | 930 |
| | 60 ft downstream of Santa Fe Ave. | 932 |
| | At Atchinson Topeka & Santa Fe RR. | 943 |
| | Steuben Ave | 944 |
| | 240 ft upstream of Steuben Ave. | 947 |
| | 40 ft downstream of Garfield Ave. | 948 |
| | 360 ft upstream of Garfield Ave. | 949 |
| | 160 ft downstream of Lafayette Ave. | 952 |
| | 100 ft upstream of Lafayette Ave. | 955 |
| | 40 ft downstream of Kansas Ave. | 958 |
| | 120 ft upstream of Kansas Ave. | 959 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33

FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20100 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3686]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Neodesha, Wilson County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Neodesha, Wilson County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Neodesha, Wilson County, Kans.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Neodesha, Wilson County, Kans., are available for review at office of the Building Inspector, 114 South fourth Street, Neodesha, Kans.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Neodesha, Wilson County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Verdigris River | Corporate limits, just downstream from St. Louis-San Francisco RR. | 791 |
| | Mill Street Bridge | 793 |
| | Intersection of Osage and 5th Sts. | 796 |
| | Intersection of 4th and Idaho Sts. | 796 |
| Fall River | Intersection of U.S. Highway 75 and 13th St. | 802 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: July 10, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20101 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4172]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Nickerson, Reno County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Nickerson, Reno County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Nickerson, Reno County, Kans.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Nickerson are available for review at the City Hall, 11 North Nickerson, Nickerson, Kans.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for city of Nickerson, Reno County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Arkansas River | Just upstream of county road FAS 560. | 1,591 |
| | 3,750 ft upstream of county road FAS 560. | 1,595 |
| | 3,270 ft downstream of State Route 560. | 1,598 |
| | 420 ft downstream of State Route 96. | 1,601 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Bull Creek | 4,220 ft downstream of county road FAS 560. | 1,592 |
| | 1,850 ft downstream of county road FAS 560. | 1,594 |
| | 260 ft upstream of county road FAS 560. | 1,598 |
| | 1,950 ft upstream of county road FAS 560. | 1,600 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20102 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3954]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Catlettsburg, Boyd County, Ky.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Catlettsburg, Boyd County, Ky. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Catlettsburg, Boyd County, Ky.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Catlettsburg, Boyd County, Ky. are available for review at the Catlettsburg City Building, 26th and Broadway, Catlettsburg, Ky. 41129.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Catlettsburg, Boyd County, Ky.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Ohio River | Confluence of Horse Creek. | 549 |
| | Confluence of Catletts Creek. | 550 |
| Big Sandy River | U.S. Route 60 | 550 |
| | Chessie System | 551 |
| Catletts Creek | U.S. Route 60 | 550 |
| | Broadway St. | 550 |
| | Upstream corporate limits. | 550 |
| Horse Creek | Chessie System | 549 |
| | Upstream corporate limits. | 549 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20103 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4182]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Spencer, Roane County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Spencer, Roane County, W. Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Spencer, Roane County, W. Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Spencer are available for review at the City Hall, 207 Court Street, Spencer, W. Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Spencer, Roane County, W. Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in

flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Spring Creek | At eastern corporate limit. | 725 |
| | Just upstream of Market St. | 725 |
| | Upstream of Main St | 726 |
| | 2,320 ft upstream of Main St. | 727 |
| | At western corporate limit. | 729 |
| Goff Run | At confluence with Spring Creek. | 726 |
| | 1,425 ft upstream of State Hospital Rd. | 726 |
| | 2,530 ft upstream of State Hospital Rd. | 735 |
| | At southeastern corporate limit. | 740 |
| Tanner Run | At confluence with Spring Creek. | 725 |
| | 275 ft upstream of Main St. | 725 |
| | 845 ft upstream of Main St. | 727 |
| | 1,560 ft upstream of Main St. | 728 |
| | At north western corporate limit. | 733 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20071 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4144]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for the City of Grosse Pointe Park, Wayne County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Grosse Pointe Park, Wayne County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Grosse Pointe Park, Mich.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Grosse Pointe Park, are available for review at City Hall, 15115 East Jefferson, Grosse Pointe Park, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Grosse Pointe Park, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Lake St. Clair | Barrington Road | 578.5 |
| | Berkshire Road | 578.5 |
| | Trombley Road | 578.5 |
| | Bedford Road | 578.5 |
| | Windmill Pointe Drive | 578.5 |
| | Fairfax Street | 578.5 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20072 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4145]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Village of Grosse Pointe Shores, Wayne County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Grosse Pointe Shores, Wayne County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the village of Grosse Pointe Shores, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Grosse Pointe Shores, Wayne County, Mich., are available for review at Village Hall, 795 Lake Shore Road, Grosse Pointe Shores, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Grosse Pointe Shores, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An

opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Lake St. Clair..... | East of Lake Shore Drive. | 578.5 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20073 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3563]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Indianola, Sunflower County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Indianola, Sunflower County, Miss. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Indianola, Miss.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Indianola, are available for review at City Hall, 202 Main Street, Indianola, Miss.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Indianola, Miss.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Indian Bayou..... | Westside Ave..... | 116 |
| | Alexander Ave.*..... | 116 |
| | Alexander Ave.**..... | 115 |
| East Prong..... | U.S. Highway 49W..... | 118 |
| | Sunflower Ave..... | 118 |
| | Front Ave.*..... | 118 |
| | Front Ave.**..... | 116 |
| Short Bayou..... | U.S. Highway 82..... | 118 |
| | Chapman St..... | 118 |
| Tributary 1..... | U.S. Highway 82*..... | 120 |
| | U.S. Highway 82**..... | 117 |
| West Prong..... | Alexander Ave..... | 116 |

* Upstream.
** Downstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20074 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3735]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Fredericktown, Madison County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Fredericktown, Madison County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Fredericktown, Madison County, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Fredericktown, are available for review at the City Clerk's Office, City Hall, 120 West Main, Fredericktown, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Fredericktown, Madison County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or in-

dividuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Little St. Francis River. | At corporate limits | 702 |
| | At Highway 72 | 705 |
| | At Saline Creek | 707 |
| | Upstream at dam | 737 |
| Saline Creek | At Sandy Lane | 708 |
| | At Lincoln Ave | 712 |
| | At Missouri Pacific RR | 715 |
| Toler Creek | At East Main St | 713 |
| | At Franklin St | 719 |
| | At East Marvin Ave | 735 |
| Village Creek | At Catherine Mine Rd | 707 |
| Lateral C | At Newberry St | 727 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20075 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4150]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Village of Dryden, Tompkins County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Dryden, Tompkins County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the village of Dryden, Tompkins County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Dryden are available for review at the Village Hall, Dryden, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for village of Dryden, Tompkins County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Virgil Greek | 100 ft upstream from Springhouse Rd. | 1,066 |
| | 230 ft upstream from West Main St. | 1,077 |
| | 480 ft upstream from confluence with Dryden Lake outlet. | 1,080 |
| | 320 ft upstream from Mill St. | 1,085 |
| | 100 ft upstream of South St. | 1,093 |
| | 80 ft upstream from Lake Rd. | 1,102 |
| | At the upstream corporate limit. | 1,111 |
| Dryden Lake Outlet. | 375 ft upstream from confluence with Virgil Creek. | 1,080 |
| | Downstream of Mill St | 1,085 |
| | 375 ft upstream from Mill St. | 1,087 |
| | 75 ft downstream from Ferguson Rd. | 1,098 |
| | Upstream of Ferguson Rd. | 1,101 |
| | Downstream of ConRail. | 1,102 |
| | Upstream of ConRail | 1,104 |
| | At the upstream corporate limit. | 1,105 |
| Egypt Creek | At Springhouse Rd | 1,071 |
| | 500 ft downstream from lateral D confluence. | 1,072 |
| | Upstream of Lewis St | 1,081 |
| | Upstream of North St | 1,095 |
| | 80 ft upstream from Lee Rd. | 1,105 |
| | At upstream corporate limits. | 1,108 |
| Lateral A | At the confluence with Egypt Creek. | 1,081 |
| | 380 ft downstream from North St. | 1,082 |
| | 75 ft downstream from North St. | 1,084 |
| | Upstream of North St | 1,087 |
| | 650 ft upstream from Lateral C confluence. | 1,087 |
| | At East Main St | 1,095 |
| | 120 ft upstream from James St. | 1,097 |
| | 130 ft downstream from end of culvert. | 1,101 |
| | 50 ft upstream from end of culvert. | 1,102 |
| | At start of culvert | 1,107 |
| | At upstream limit of study. | 1,114 |
| Lateral B | At Union St | 1,098 |
| | 500 ft upstream from Union St. | 1,100 |
| | At underground entrance. | 1,115 |
| | At upstream limit of study. | 1,139 |
| Lateral C | At confluence with lateral A. | 1,087 |
| | 330 ft upstream from the confluence with lateral A. | 1,087 |
| | At upstream limit of study. | 1,093 |
| Lateral D | 200 ft upstream from confluence with Egypt Creek. | 1,076 |
| | 240 ft downstream from Freeville Rd. | 1,078 |
| | At Freeville Rd | 1,079 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20077 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4074]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Village of Pelham Manor, Westchester County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Pelham Manor, Westchester County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the village of Pelham Manor, Westchester County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Pelham Manor, Westchester County, N.Y., are available for review at the Village Hall, 4 Penfield Place, Pelham Manor, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Pelham Manor, Westchester County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Hutchinson River (elevations). | Pelham Parkway | 14 |
| | Parkway ramp | 14 |
| | Colonial Ave | 14 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20078 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3463]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Town of Pompey, Onondaga County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Pompey, Onondaga County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Pompey, Onondaga County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Pompey, Onondaga County, N.Y., are available for review at the Supervisor's Office, town of Pompey, 3232 Windy Hill Lane, Manlius, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for town of Pompey, Onondaga County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet above mean sea level |
|---|---|---|
| Brown's Gulf | Burke Rd. (upstream) | 1,326 |
| | Burke Rd. (downstream) | 1,269 |
| | Hennaberry Rd | 1,257 |
| | Brown Gulf Rd. (upstream). | 1,199 |
| | Brown Gulf Rd. (downstream). | 984 |
| | Watervale Rd | 908 |
| | Confluence with West Branch Limestone Creek. | 892 |
| Limestone Creek | Corporate limits | 998 |
| | Gardner Rd | 998 |
| | Delphi Falls Rd | 955 |
| | East Pompey Hollow Rd | 923 |
| | Fairport Rd | 906 |
| | Tracy Rd | 872 |
| | Woodard Rd | 815 |
| | U.S. Route 20 | 813 |
| | Hills Rd | 792 |
| | East Rd. No. 2 | 776 |
| | Oran Delphi Rd | 771 |
| | Corporate limits | 741 |
| West Branch Limestone Creek. | Old Steep Hill Rd | 1,285 |
| | West Rd. No. 4 | 1,225 |
| | U.S. Route 20 | 1,115 |
| | East Rd. No. 2 | 910 |
| | Indian Hill Rd | 800 |
| | Broadfield Rd | 747 |
| | Gibbs Rd | 710 |
| | Corporate limits | 600 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33

FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20079 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4159]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Strongsville, Cuyahoga County, Ohio.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Strongsville, Cuyahoga County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Strongsville, Cuyahoga County, Ohio.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Strongsville, Cuyahoga County, Ohio, are available for review at the City Hall, 18688 Royalton Road, Strongsville, Ohio.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Strongsville, Cuyahoga County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Blodgett Creek | Marks Rd. (upstream) | 788 |
| | Barton Dr. extended | 789 |
| | Berince Dr. extended | 792 |
| | Lincolnshire Blvd extended. | 795 |
| | Priem Rd (upstream) | 798 |
| | Ashwood Dr. extended | 800 |
| | Courtland Dr. (upstream). | 805 |
| Baker Creek | Downstream corporate limits. | 814 |
| | Confluence with tributary 1. | 828 |
| | Baltimore & Ohio RR. (downstream). | 854 |
| | Baltimore & Ohio RR. (upstream). | 858 |
| | Royalton Rd. (downstream). | 862 |
| | Royalton Rd. (upstream). | 866 |
| | Prospect Rd. (upstream) | 883 |
| | Pinewood Dr. extended | 890 |
| | Walnut Creek Dr. extended. | 904 |
| Tributary No. 1 | Confluence with Baker Creek. | 828 |
| | Royalton Rd. (downstream). | 841 |
| | Royalton Rd. (upstream). | 848 |
| | 1,500 ft upstream Royalton Rd. | 856 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20080 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4342]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Borough of Bridgeport, Montgomery County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the borough of Bridgeport, Montgomery County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the borough of Bridgeport, Montgomery County, Pa.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of Bridgeport, Montgomery County, Pa., are available for review at the Borough Hall, Fourth and Mill Streets, Bridgeport, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the borough of Bridgeport, Montgomery County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received

from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Schuylkill river ..... | Downstream corporate limits. | 75 |
| | Dekalb St ..... | 78 |
| | Upstream corporate limits. | 78 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (34 FR 2680, February 27, 1969), as amended (39 FR 2787, January 24, 1974).)

Issued: February 14, 1978..

PATRICIA ROBERTS HARRIS,
*Secretary.*

[FR Doc. 78-20081 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-413]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of McKeesport, Allegheny County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of McKeesport, Allegheny County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of McKeesport, Allegheny County, Pa.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of McKeesport, Allegheny County, Pa., are available for review at the City Engineer's Office, 201 Lysle Boulevard, McKeesport, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of McKeesport, Allegheny County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Monongahela River. | Upstream corporate limits. | 746 |
| | Confluence of Youghiogheny River. | 744 |
| | Confluence of Crooked Run. | 743 |
| | Downstream corporate limits. | 742 |
| Youghiogheny River. | Upstream corporate limits. | 749 |
| | Confluence of Long Run | 746 |
| | 15th Ave ..... | 744 |
| | Mouth ..... | 744 |
| Long Run ..... | Upstream corporate limits. | 791 |
| | Upstream of shopping center drive. | 759 |
| | Corporate limits (downstream of shopping center). | 757 |
| | Long Run Rd ..... | 747 |
| | Mouth ..... | 746 |
| Crooked Run ..... | Upstream corporate limits. | 816 |
| | Upstream of Avberle Ave. | 807 |
| | Upstream of 5th Ave..... | 799 |
| | Upstream of Pennsylvania Ave. | 794 |
| | Downstream limit of detailed study. | 785 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (43 FR 7719).)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20082 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3598]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Township of Upper Dublin, Montgomery County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the township of Upper Dublin, Montgomery County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the township of Upper Dublin, Montgomery County, Pa.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of Upper Dublin, Montgomery County, Pa., are available for review at the Township Building, 801 Loch Alsh Avenue, Fort Washington, Pa. 19034.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the township of Upper Dublin, Montgomery County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Pine Run | State Route 309 | 175 |
| | At Pennsylvania Turnpike ramp. | 178 |
| | Delaware Ave | 178 |
| | Confluence of Rapp Run. | 179 |
| Rapp Run | Confluence with Pine Run. | 179 |
| | Virginia Dr | 179 |
| | Highland Ave | 179 |
| | Susquehanna River | 207 |
| | Mundock Rd. spur | 226 |
| | Limekiln Rd. at the dam | 252 |
| | Jarrettown Rd | 255 |
| | Arthur Ave | 349 |
| Sandy Run | Corporate limits | 187 |
| | Dam No. 1 | 187 |
| | Dam No. 2 | 189 |
| | Limekiln Rd | 209 |
| | Fitzwatertown Rd | 219 |
| Wissahickon Creek. | Corporate limit | 165 |
| | Butler Pike | 177 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (43 FR 7719).)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20083 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-3350]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determinations for the Town of Woodstock, Windsor County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Woodstock, Windsor County, Vt. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Woodstock, Vt.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Woodstock, are available for review at town office, Route 4, Woodstock, Vt.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Woodstock, Vt.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Ottauquechee River. | Upstream corporate limits. | 816 |
| | Lincoln covered bridge | 748 |
| | Taftsville Station dam | 650 |
| Gulf Stream Brook. | Vermont Route 12 bridge (stream station location 14,300). | 855 |
| | Vermont Route 12 bridge (stream station location 10,900). | 818 |
| | Vermont Route 12 bridge (stream station location 1,800). | 697 |
| Barnard Brook | Barnard-Woodstock Stage Rd. bridge. | 696 |
| | Upstream side dam | 690 |
| | Downstream side dam | 680 |
| | Maplewood Rd. bridge (upstream). | 673 |
| Kedron Brook | Vermont Route 106 bridge. | 1,188 |
| | Morgan Hill Rd. bridge | 1,173 |
| | Dunham Hill Rd. bridge | 778 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20084 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4082]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Covington, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Covington, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood

elevations, for the city of Covington, Va.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Covington, Va., are available for review at the bulletin board of City Hall, 158 North Court Avenue, Covington, Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for city of Covington, Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Jackson River | Downstream corporate limits. | 1,190 |
| | Virginia Route 18 | 1,198 |
| | Rayon Dr | 1,210 |
| | Durant Rd | 1,223 |
| | U.S. Route 60 | 1,233 |
| | West Vaco Bridge | 1,237 |
| | Upstream corporate limits. | 1,246 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20085 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4139]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the County of Rockbridge, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the county of Rockbridge, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the county of Rockbridge, Va.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the county of Rockbridge, Va., are available for review at the County Administration Building, Courthouse Square, Lexington, Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the county of Rockbridge, Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, above mean sea level |
|---|---|---|
| James River | Upstream county limits. | 767 |
| | Botetourt County limits. | 761 |
| | Highway 759 bridge | 735 |
| | Downstream county limits. | 710 |
| Buffalo Creek | 5,515 ft above Possum Run. | 962 |
| | 3,380 ft above Possum Run at private drive. | 955 |
| | 3,200 ft above Possum Run. | 954 |
| South River | Norfolk & Western Ry | 1,006 |
| | State Route 716 | 990 |
| | State Route 631 | 917 |
| Irish Creek | 6,480 ft above mouth | 1,089 |
| | 3,000 ft above mouth | 1,050 |
| | State Route 608 | 1,020 |
| Maury River at Lexington. | Confluence of Woods Creek. | 912 |
| | U.S. Route 11 | 911 |
| Maury River at Rockbridge Baths. | 23,340 ft above confluence of Cedar Grove Branch. | 1,164 |
| | 20,000 ft above confluence. | 1,136 |
| | State Route 623 (extended). | 1,120 |
| | State Route 39 (extended). | 1,112 |
| | State Route 602 (extended). | 1,103 |
| | 8,400 ft above confluence. | 1,078 |
| Calf Pasture River at Camp Virginia. | 10,060 ft above Little Calf Pasture River. | 1,378 |
| | 8,000 ft above river | 1,371 |
| | State Route 601 | 1,363 |
| Calf Pasture River at Goshen. | 5,900 ft above confluence of Goshen Creek. | 1,408 |
| | State Route 48 | 1,400 |
| | State Route 746 | 1,396 |
| | Mouth Goshen Creek | 1,393 |
| Mill Creek | 4,870 ft above mouth | 1,426 |
| | Downstream corporate limits, town of Goshen. | 1,411 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (43 FR 7719).)

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20086 Filed 7-21-78; 8:45 am]

[4210-01]

[Docket No. FI-4140]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Town of Fort Gay, Wayne County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Fort Gay, Wayne County, W. Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Fort Gay, W. Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Fort Gay, Wayne County, W. Va., are available for review at Town Hall, Wayne Street, Fort Gay, W. Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for town of Fort Gay, Wayne County, W. Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Big Sandy River | Corporate limits 26.46 miles above mouth. | 576 |
| | Confluence with Tug and Levisa Forks. | 577 |
| Tug Fork | Louisa-Fort Gay Toll Bridge. | 577 |
| Mill Creek | Norfolk and Western RY. | 578 |
| | Cedar Heights Rd | 578 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20087 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4147]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the City of Sugar Creek, Jackson County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Sugar Creek, Jackson County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Sugar Creek, Jackson County, Mo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Sugar Creek are available for review at the City Clerk's Office, City Hall, 103 South Sterling, Sugar Creek, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Sugar Creek, Jackson County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Missouri River | Downstream of Missouri Route 291. | 733 |
| | 1,500 ft upstream from Missouri Route 291. | 734 |
| | At the upstream corporate limit. | 739 |
| Sugar Creek | 95 ft downstream from Santa Fe RR. | 739 |
| | 80 ft upstream from Santa Fe RR. | 747 |
| | 80 ft downstream from Amoco Plant Rd. (2,560 ft upstream from Cement City Rd). | 752 |
| | 95 ft downstream from Amoco Plant RR. Spur (4,118 ft upstream from Cement City Rd). | 758 |
| | Just upstream of Amoco Plant RR Spur (4,225 ft upstream from Cement City Rd). | 773 |
| | 425 ft upstream from Carlisle Ave. | 774 |
| | 30 ft downstream from Kentucky Ave. | 776 |
| | 40 ft upstream from Kentucky Ave. | 780 |
| | 400 ft upstream from Ohio St. | 783 |
| | 60 ft downstream from Hink St. | 786 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| | 40 ft upstream from Hink St. | 799 |
| | At the upstream corporate limit. | 809 |
| Mill Creek | 120 ft upstream from Santa Fe RR. | 740 |
| | 580 ft upstream from Courtney Rd. | 751 |
| | Downstream side of Quarry Rd. | 766 |
| | Upstream side of Quarry Rd. | 768 |
| | 1,740 ft upstream from Quarry Rd. | 770 |
| | 600 ft downstream from corporate limit. | 783 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).)

Issued: June 14, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20185 Filed 7-21-78; 8:45 am]

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[4210-01]

[Docket No. FI-4148]

## PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

### Final Flood Elevation Determination for the Town of Merrimack, Hillsborough County, N.H.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Merrimack, Hillsborough County, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Merrimack, Hillsborough County, N.H.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Merrimack, Hillsborough County, N.H., are available for review at the Town Hall, Merrimack, N.H.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Merrimack, Hillsborough County, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Merrimack River | Depot St. (extended) | 121 |
| | Star Dr. (extended) | 117 |
| Souhegan River | Just downstream of Amherst Rd. (breached bridge). | 213 |
| | Disco Lane (extended) | 189 |
| | Just downstream of Turkey Hill Rd. Bridge. | 181 |
| | Just upstream of Everett Turnpike Bridge. | 138 |
| Baboosic Brook | Just downstream of Stowell Rd. Bridge. | 224 |
| | Just downstream of Parkhurst and Woodward Rd. Bridge. | 216 |
| | Just upstream of Bedford Rd. Bridge (upstream crossing). | 210 |
| | Just downstream of Wire Rd. Bridge. | 178 |
| | Just downstream of Everett Turnpike Bridge. | 172 |
| Pennichuck Brook. | Approximately 150 ft upstream of Millford Rd. (State Route 101A Bridge). | 190 |
| | Just upstream of Tinker Rd. Bridge. | 175 |
| | Approximately 200 ft upstream of Everett Turnpike Bridge. | 175 |
| | Manchester Street Bridge. | 170 |
| Naticook Brook | Just downstream of Green Pond Rd. Culvert. | 186 |
| | Just downstream of Amherst Rd. Culvert. | 153 |
| | Approximately 100 ft downstream of Everett Turnpike Culvert. | 125 |
| McQuade Brook | Just upstream of Willow Bridge Rd. (wooden bridge). | 179 |
| Tributary A | Approximately 300 ft downstream of western corporate limits. | 208 |
| Baboosic Lake | Entire shoreline | 237 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: June 20, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20186 Filed 7-21-78; 8:45 am]

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[4830-01]

## Title 26—Internal Revenue

## CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

### SUBCHAPTER A—INCOME TAX

[T.D. 7554]

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

### Treatment of Property Transferred in Connection With the Performance of Services

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of property transferred in connection with the performance of services. Changes to the applicable tax law were made by the Tax Reform Act of 1969. These regulations provide necessary guidance to the public for compliance with the law, and affect all employers, employees, and independent contractors with respect to certain forms of compensation.

DATE: The regulations are effective for the transfer of property after June 30, 1969, except as otherwise provided.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 3, 1971, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 83, 61, 162, 402(b), 403(c), 403(d), 404(a)(5), 421, and 721 of the Internal Revenue Code of 1954, 36 FR 10787. On June 12, 1971, the FEDERAL REGISTER published a notice of corrections to the proposed amendments, 36 FR 11451. The amendments were proposed to conform the regulations to section 321 of the Tax Reform Act of 1969 (83 Stat. 588). A public hearing was held on November 3, 1971. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. On September 20, 1977, the FEDERAL REGISTER published additional proposed amendments to the regulations under section 83 of the Internal Revenue Code of 1954, relating to reporting requirements for nonqualified stock options (42 FR 47222). Those proposed amendments are not adopted by this Treasury decision and remain outstanding on notice.

EXPLANATION OF THE REGULATIONS

The regulations in this document concern the treatment of property that is transferred in connection with the performance of services. The basic rules are contained in the regulations under section 83 of the Code. Rules concerning the treatment of transfers of property to or from employees' trusts or from employees' annuity plans are found in regulations under sections 402, 403, and 404 of the Code. Special rules announced in the notice of proposed rulemaking concerning the treatment of transfers of partnership interests under section 721 of the Code are not adopted by this Treasury decision, and remain outstanding on notice.

Section 83 and the regulations under section 83 provide that if an interest in property is transferred to any person, by reason of the performance of services, the person who performed those services recognizes compensation income. The time of recognition depends on when the transferred property is substantially vested. Property is substantially vested when it is transferable or not subject to a substantial risk of forfeiture. The concept of "substantial vesting" replaces the concept of "complete transfer", which appeared in the 1971 notice of proposed rulemaking. This change was made in response to public comments. The person who performed the services includes the value of the property (less any amount paid for the property) in gross income when the property is substantially vested.

The 1971 notice of proposed rulemaking stated that the transferor of property in connection with the performance of services was to be regarded as the owner of such property until the property was substantially vested. The notice also stated that any income from such property, or the right to the use of such property, constitutes additional compensation to the person who performed services when such income is received or such use is made available. The regulations under §1.83-1(a)(1) adopt these rules as stated in the notice. To the extent that dividends paid on substantially nonvested stock are treated as compensation under §1.83-1(a)(1), the Internal Revenue Service will no longer follow the decisions in *Hamilton Manufacturing Co.*, 3 B.T.A. 1045 (1926), *Kennington Realty Co.*, 8 B.T.A. 1030 (1927), *Kennington* v. *Donald*, 50 F.2d 894 (5th Cir. 1931), *S.C. Toof & Co.*, 21 B.T.A. 916 (1930), *Commercial Investment Trust Corp.*, 28 B.T.A. 143 (1933), *aff'd per cur.*, 74 F. 2d 1015 (2d Cir. 1935), *W. M. Ritter Lumber Co.*, 30 B.T.A. 231 (1934), *A. Levy & J. Zentner Co.*, 31 B.T.A. 386 (1934), and *Gardner-Denver Company* v. *Commissioner*, 75 F. 2d 38 (7th Cir. 1935).

Taxpayers may elect, under section 83(b) and the regulations, to treat property as if it were substantially vested at the time of transfer, even though the property is not transferable and is subject to a substantial risk of forfeiture. For purposes of determining the amount of compensation, the fair market value of the property at the time of taxation is determined without regard to any restriction on the property, except a restriction that by its terms will never lapse.

Subject to the requirements of sections 162 and 212, a deduction is allowed to the person for whom services were performed, in an amount equal to the amount of compensation includible in the gross income of the person who provided the services, at the time the compensation becomes includible in the gross income of the person who performed the services. This timing rule is a change from the regulations as proposed in 1971, which allowed a deduction at the time an amount was actually included in gross income. This change was suggested by public comments to the regulations as proposed in 1971.

The regulations under section 402(b), 403(c) and 404(a)(5) provide rules for the treatment of nonexempt employees' trusts and nonqualified employees' annuity plans that are consistent with the treatment of property under section 83. Thus, where an employer contributes cash to a nonexempt employees' trust for a nonqualified employees' annuity plan, an employee is taxable on the contribution when the employee's rights under the trust or plan are substantially vested.

An employee is not taxed on the value of a vested interest in a trust attributable to contributions made to the trust while the trust was exempt from taxation under section 501(a). This is a change prompted by public comments on the rule announced in the 1971 notice of proposed rulemaking, which taxed employees on their entire vested interest in a trust upon the trust's loss of exempt status.

Under section 404(a)(5) an employer is entitled to a deduction for amounts contributed to a nonexempt employees' trust or for the purchase of an annuity under a nonqualified annuity plan, but only when the amounts due to such contributions are includible in the employee's gross income, and only if separate employee accounts are maintained. The regulations under section 404(a)(5) contained in this document clarify the separate account requirement.

PUBLIC COMMENTS ON THE REGULATIONS AS PROPOSED IN 1971

In addition to the changes already mentioned, several changes of less significance were made in response to public comments. Many comments suggested changes that either conflicted with the express statutory language or would have made the regulations unreasonably long and complex. Those suggestions were rejected.

DRAFTING INFORMATION

The principal author of this regulation was Geoffrey B. Lanning of the Legislation and Regulations Division of the 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 regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.61-2 is amended by revising paragraph (d)(1),

(2), (4) and (5), and adding paragraph (d)(6) to read as follows:

**§ 1.61-2 Compensation for services, including fees, commissions, and similar items.**

* * * * *

(d) *Compensation paid other than in cash*—(1) *In general.* Except as otherwise provided in paragraph (d)(6)(i) of this section (relating to certain property transferred after June 30, 1969), if services are paid for in property, the fair market value of the property taken in payment must be included in income as compensation. If services are paid for in exchange for other services, the fair market value of such other services taken in payment must be included in income as compensation. If the services are rendered at a stipulated price, such price will be presumed to be the fair market value of the compensation received in the absence of evidence to the contrary. For special rules relating to certain options received as compensation, see §§ 1.61-15, 1.83-7, and section 421 and the regulations thereunder. For special rules relating to premiums paid by an employer for an annuity contract which is not subject to section 403(a), see section 403(c) and the regulations thereunder and § 1.83-8(a). For special rules relating to contributions made to an employees' trust which is not exempt under section 501, see section 402(b) and the regulations thereunder and § 1.83-8(a).

(2) *Property transferred to employee or independent contractor.* (i) Except as otherwise provided in section 421 and the regulations thereunder and § 1.61-15 (relating to stock options), and paragraph (d)(6)(i) of this section, if property is transferred by an employer to an employee or if property is transferred to an independent contractor, as compensation for services, for an amount less than its fair market value, then regardless of whether the transfer is in the form of a sale or exchange, the difference between the amount paid for the property and the amount of its fair market value at the time of the transfer is compensation and shall be included in the gross income of the employee or independent contractor. In computing the gain or loss from the subsequent sale of such property, its basis shall be the amount paid for the property increased by the amount of such difference included in gross income.

* * * * *

(4) *Stock and notes transferred to employee or independent contractor.* Except as otherwise provided by section 421 and the regulations thereunder and § 1.61-15 (relating to stock options), and paragraph (d)(6)(i) of this section, if a corporation transfers its own stock to an employee or independent contractor as compensation for services, the fair market value of the stock at the time of transfer shall be included in the gross income of the employee or independent contractor. Notes or other evidences of indebtedness received in payment for services constitute income in the amount of their fair market value at the time of the transfer. A taxpayer receiving as compensation a note regarded as good for its face value at maturity, but not bearing interest, shall treat as income as of the time of receipt its fair discounted value computed at the prevailing rate. As payments are received on such a note, there shall be included in income that portion of each payment which represents the proportionate part of the discount originally taken on the entire note.

(5) *Property transferred on or before June 30, 1969, subject to restrictions.* Notwithstanding paragraph (d) (1), (2), or (4) of this section, if any property is transferred after September 24, 1959, by an employer to an employee or independent contractor as compensation for services, and such property is subject to a restriction which has a significant effect on its value at the time of transfer, the rules of § 1.421-6(d)(2) shall apply in determining the time and the amount of compensation to be included in the gross income of the employee or independent contractor. This (5) is also applicable to transfers subject to a restriction which has a significant effect on its value at the time of transfer and to which § 1.83-8(b) (relating to transitional rules with respect to transfers of restricted property) applies. For special rules relating to options to purchase stock or other property which are issued as compensation for services, see § 1.61-15 and section 421 and the regulations thereunder.

(6) *Certain property transferred, premiums paid, and contributions made in connection with the performance of services after June 30, 1969*—(i) *Exception.* Paragraph (d) (1), (2), (4), and (5) of this section and § 1.61-15 do not apply to the transfer of property (as defined in § 1.83-3(e)) after June 30, 1969, unless § 1.83-8 (relating to the applicability of section 83 and transitional rules) applies. If section 83 applies to a transfer of property, and the property is not subject to a restriction that has a significant effect on the fair market value of such property, then the rules contained in paragraph (d) (1), (2), and (4) of this section and § 1.61-15 shall also apply to such transfer to the extent such rules are not inconsistent with section 83.

(ii) *Cross references.* For rules relating to premiums paid by an employer for an annuity contract which is not subject to section 403(a), see section 403(c) and the regulations thereunder. For rules relating to contributions made to an employees' trust which is not exempt under section 501(a), see section 402(b) and the regulations thereunder.

Par. 2. Paragraph (a) of § 1.61-15 is amended to read as follows:

**§ 1.61-15 Options received as payment of income.**

(a) *In general.* Except as otherwise provided in § 1.61-2(d)(6)(i) (relating to certain restricted property transferred after June 30, 1969), if any person receives an option in payment of an amount constituting compensation of such person (or any other person), such option is subject to the rules contained in § 1.421-6 for purposes of determining when income is realized in connection with such option and the amount of such income. In this regard, the rules of § 1.421-6 apply to an option received in payment of an amount constituting compensation regardless of the form of the transaction. Thus, the rules of § 1.421-6 apply to an option transferred for less than its fair market value in a transaction taking the form of a sale or exchange if the difference between the amount paid for the option and its fair market value at the time of transfer is the payment of an amount constituting compensation of the transferee or any other person. This section, for example, makes the rules of § 1.421-6 applicable to options granted in whole or partial payment for services of an independent contractor. If an amount of money or property is paid for an option to which this paragraph applies, then the amount paid shall be part of the basis of such option.

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Par. 3. There are inserted after § 1.82-1 the following new sections:

Sec.

1.83-1 Property transferred in connection with the performance of services.
1.83-2 Election to include in gross income in year of transfer.
1.83-3 Meaning and use of certain terms.
1.83-4 Special rules.
1.83-5 Restrictions that will never lapse.
1.83-6 Deduction by employer.
1.83-7 Taxation of nonqualified stock options.
1.83-8 Applicability of section and transitional rules.

**§ 1.83-1 Property transferred in connection with the performance of services.**

(a) *Inclusion in gross income*—(1) *General rule.* Section 83 provides rules for the taxation of property transferred to an employee or independent

contractor (or beneficiary thereof) in connection with the performance of services by such employee or independent contractor. In general, such property is not taxable under section 83(a) until it has been transferred (as defined in § 1.83-3(a)) to such person and become substantially vested (as defined in § 1.83-3(b)) in such person. In that case, the excess of—

(i) The fair market value of such property (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) at the time that the property becomes substantially vested, over

(ii) The amount (if any) paid for such property,

shall be included as compensation in the gross income of such employee or independent contractor for the taxable year in which the property becomes substantially vested. Until such property becomes substantially vested, the transferor shall be regarded as the owner of such property, and any income from such property received by the employee or independent contractor (or beneficiary thereof) or the right to the use of such property by the employee or independent contractor constitutes additional compensation and shall be included in the gross income of such employee or independent contractor for the taxable year in which such income is received or such use is made available. This paragraph applies to a transfer of property in connection with the performance of services even though the transferor is not the person for whom such services are performed.

(2) *Life insurance.* The cost of life insurance protection under a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection is taxable generally under section 61 and the regulations thereunder during the period such contract remains substantially nonvested (as defined in § 1.83-3(b)). The cost of such life insurance protection is the reasonable net premium cost, as determined by the Commissioner, of the current life insurance protection (as defined in § 1.72-16(b)(3)) provided by such contract.

(3) *Cross references.* For rules concerning the treatment of employers and other transferors of property in connection with the performance of services, see section 83(h) and § 1.83-6. For rules concerning the taxation of beneficiaries of an employees' trust that is not exempt under section 501(a), see section 402(b) and the regulations thereunder.

(b) *Subsequent sale, forfeiture, or other disposition of nonvested property.* (1) If substantially nonvested property (that has been transferred in connection with the performance of services) is subsequently sold or otherwise disposed of to a third party in an arm's length transaction while still substantially nonvested, the person who performed such services shall realize compensation in an amount equal to the excess of—

(i) The amount realized on such sale or other disposition, over

(ii) The amount (if any) paid for such property.

Such amount of compensation is includible in his gross income in accordance with his method of accounting. Two preceding sentences also apply when the person disposing of the property has received it in a non-arm's length transaction described in paragraph (c) of this section. In addition, section 83(a) and paragraph (a) of this section shall thereafter cease to apply with respect to such property.

(2) If substantially nonvested property that has been transferred in connection with the performance of services to the person performing such services is forfeited while still substantially nonvested and held by such person, the difference between the amount paid (if any) and the amount received upon forfeiture (if any) shall be treated as an ordinary gain or loss. This paragraph (b)(2) does not apply to property to which § 1.83-2(a) applies.

(3) This paragraph (b) shall not apply to, and no gain shall be recognized on, any sale, forfeiture, or other disposition described in this paragraph to the extent that any property received in exchange therefor is substantially nonvested. Instead, section 83 and this section shall apply with respect to such property received (as if it were substituted for the property disposed of).

(c) *Dispositions of nonvested property not at arm's length.* If substantially nonvested property (that has been transferred in connection with the performance of services) is disposed of in a transaction which is not at arm's length and the property remains substantially nonvested, the person who performed such services realizes compensation equal in amount to the sum of any money and the fair market value of any substantially vested property received in such disposition. Such amount of compensation is includible in his gross income in accordance with his method of accounting. However, such amount of compensation shall not exceed the fair market value of the property disposed of at the time of disposition (determined without regard to any lapse restriction), reduced by the amount paid for such property. In addition, section 83 and these regulations shall continue to apply with respect to such property, except that any amount previously includible in gross income under this paragraph (c) shall thereafter be treated as an amount paid for such property. For example, if in 1971 an employee pays $50 for a share of stock which has a fair market value of $100 and is substantially nonvested at that time and later in 1971 (at a time when the property still has a fair market value of $100 and is still substantially nonvested) the employee disposes of, in a transaction not at arm's length, the share of stock to his wife for $10, the employee realizes compensation of $10 in 1971. If in 1972, when the share of stock has a fair market value of $120, it becomes substantially vested, the employee realizes additional compensation in 1972 in the amount of $60 (the $120 fair market value of the stock less both the $50 price paid for the stock and the $10 taxed as compensation in 1971). For purposes of this paragraph, if substantially nonvested property has been transferred to a person other than the person who performed the services, and the transferee dies holding the property while the property is still substantially nonvested and while the person who performed the services is alive, the transfer which results by reason of the death of such transferee is a transfer not at arm's length.

(d) *Certain transfers upon death.* If substantially nonvested property has been transferred in connection with the performance of services and the person who performed such services dies while the property is still substantially nonvested, any income realized on or after such death with respect to such property under this section is income in respect of a decedent to which the rules of section 691 apply. In such a case the income in respect of such property shall be taxable under section 691 (except to the extent not includible under section 101(b)) to the estate or beneficiary of the person who performed the services, in accordance with section 83 and the regulations thereunder. However, if an item of income is realized upon such death before July 21, 1978, because the property became substantially vested upon death, the person responsible for filing decedent's income tax return for decedent's last taxable year may elect to treat such item as includible in gross income for decedent's last taxable year by including such item in gross income on the return or amended return filed for decedent's last taxable year.

(e) *Forfeiture after substantial vesting.* If a person is taxable under section 83(a) when the property transferred becomes substantially vested and thereafter the person's beneficial interest in such property is nevertheless forfeited pursuant to a lapse restriction, any loss incurred by such person (but not by a beneficiary of such person) upon such forfeiture shall be an ordinary loss to the extent

the basis in such property has been increased as a result of the recognition of income by such person under section 83(a) with respect to such property.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* On November 1, 1978, X corporation sells to E, an employee, 100 shares of X corporation stock at $10 per share. At the time of such sale the fair market value of the X corporation stock is $100 per share. Under the terms of the sale each share of stock is subject to a substantial risk of forfeiture which will not lapse until November 1, 1988. Evidence of this restriction is stamped on the face of E's stock certificates, which are therefore nontransferable (within the meaning of § 1.83-3(d)). Since in 1978 E's stock is substantially nonvested, E does not include any of such amount in his gross income as compensation in 1978. On November 1, 1988, the fair market value of the X corporation stock is $250 per share. Since the X corporation stock becomes substantially vested in 1988, E must include $24,000 (100 shares of X corporation stock × $250 fair market value per share less $10 price paid by E for each share) as compensation for 1988. Dividends paid by X to E on E's stock after it was transferred to E on November 1, 1973, are taxable to E as additional compensation during the period E's stock is substantially nonvested and are deductible as such by X.

*Example (2).* Assume the facts are the same as in example (1), except that on November 1, 1985, each share of stock of X corporation in E's hands could as a matter of law be transferred to a bona fide purchaser who would not be required to forfeit the stock if the risk of forfeiture materialized. In the event, however, that the risk materializes, E would be liable in damages to X. On November 1, 1985, the fair market value of the X corporation stock is $230 per share. Since E's stock is transferable within the meaning of § 1.83-3(d) in 1985, the stock is substantially vested and E must include $22,000 (100 shares of X corporation stock × $230 fair market value per share less $10 price paid by E for each share) as compensation for 1985.

*Example (3).* Assume the facts are the same as in example (1) except that, in 1984 E sells his 100 shares of X corporation stock in an arm's length sale to I, an investment company, for $120 per share. At the time of this sale each share of X corporation's stock has a fair market value of $200. Under paragraph (b) of this section, E must include $11,000 (100 shares of X corporation stock × $120 amount realized per share less $10 price paid by E per share) as compensation for 1984 notwithstanding that the stock remains nontransferable and is still subject to a substantial risk of forfeiture at the time of such sale. Under § 1.83-4(b)(2), I's basis in the X corporation stock is $120 per share.

**§ 1.83-2 Election to include in gross income in year of transfer.**

(a) *In general.* If property is transferred (within the meaning of § 1.83-3(a)) in connection with the performance of services, the person performing such services may elect to include in gross income under section 83(b) the excess (if any) of the fair market value of the property at the time of transfer (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) over the amount (if any) paid for such property, as compensation for services. The fact that the transferee has paid full value for the property transferred, realizing no bargain element in the transaction, does not preclude the use of the election as provided for in this section. If this election is made, the substantial vesting rules of section 83(a) and the regulations thereunder do not apply with respect to such property, and except as otherwise provided in section 83(d)(2) and the regulations thereunder (relating to the cancellation of a nonlapse restriction), any subsequent appreciation in the value of the property is not taxable as compensation to the person who performed the services. Thus, property with respect to which this election is made shall be includible in gross income as of the time of transfer, even though such property is substantially nonvested (as defined in § 1.83-3(b)) at the time of transfer, and no compensation will be includible in gross income when such property becomes substantially vested (as defined in § 1.83-3(b)). In computing the gain or loss from the subsequent sale or exchange of such property, its basis shall be the amount paid for the property increased by the amount included in gross income under section 83(b). If property for which a section 83(b) election is in effect is forfeited while substantially nonvested, such forfeiture shall be treated as a sale or exchange upon which there is realized a loss equal to the excess (if any) of—

(1) The amount paid (if any) for such property, over,

(2) The amount realized (if any) upon such forfeiture.

If such property is a capital asset in the hands of the taxpayer, such loss shall be a capital loss. A sale or other disposition of the property that is in substance a forfeiture, or is made in contemplation of a forfeiture, shall be treated as a forfeiture under the two immediately preceding sentences.

(b) *Time for making election.* Except as provided in the following sentence, the election referred to in paragraph (a) of this section shall be filed not later than 30 days after the date the property was transferred (or, if later, January 29, 1970) and may be filed prior to the date of transfer. Any statement filed before February 15, 1970, which was amended not later than February 16, 1970, in order to make it conform to the requirements of paragraph (e) of this section, shall be deemed a proper election under section 83(b).

(c) *Manner of making election.* The election referred to in paragraph (a) of this section is made by filing one copy of a written statement with the internal revenue office with whom the person who performed the services files his return. In addition, one copy of such statement shall be submitted with this income tax return for the taxable year in which such property was transferred.

(d) *Additional copies.* The person who performed the services shall also submit a copy of the statement referred to in paragraph (c) of this section to the person for whom the services are performed. In addition, if the person who performs the services and the transferee of such property are not the same person, the person who performs the services shall submit a copy of such statement to the transferee of the property.

(e) *Content of statement.* The statement shall be signed by the person making the election and shall indicate that it is being made under section 83(b) of the Code, and shall contain the following information:

(1) The name, address and taxpayer identification number of the taxpayer;

(2) A description of each property with respect to which the election is being made;

(3) The date or dates on which the property is tansferred and the taxable year (for example, "calendar year 1970" or "fiscal year ending May 31, 1970") for which such election was made;

(4) The nature of the restriction or restrictions to which the property is subject;

(5) The fair market value at the time of transfer (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) of each property with respect to which the election is being made;

(6) The amount (if any) paid for such property; and

(7) With respect to elections made after July 21, 1978, a statement to the effect that copies have been furnished to other persons as provided in paragraph (d) of this section.

(f) *Revocability of election.* An election under section 83(b) may not be revoked except with the consent of the Commissioner. Consent will be granted only in the case where the transferee is under a mistake of fact as to the underlying transaction and must be requested within 60 days of the date on which the mistake of fact first became known to the person who made the election. In any event, a mistake as to the value, or decline in the value, of the property with respect to which an election under section 83(b) has been made or a failure to perform an act contemplated at the time of transfer

of such property does not constitute a mistake of fact.

§ 1.83-3 Meaning and use of certain terms.

(a) *Transfer*—(1) *In general.* For purposes of section 83 and the regulations thereunder, a transfer of property occurs when a person acquires a beneficial ownership interest in such property (disregarding any lapse restriction, as defined in § 1.83-3(i)).

(2) *Option.* The grant of an option to purchase certain property does not constitute a transfer of such property. However, see § 1.83-7 for the extent to which the grant of the option itself is subject to section 83. In addition, if the amount paid for the transfer of property is an indebtedness secured by the transferred property, on which there is no personal liability to pay all or a substantial part of such indebtedness, such transaction may be in substance the same as the grant of an option. The determination of the substance of the transaction shall be based upon all the facts and circumstances. The factors to be taken into account include the type of property involved, the extent to which the risk that the property will decline in value has been transferred, and the likelihood that the purchase price will, in fact, be paid. See also § 1.83-4(c) for the treatment of forgiveness of indebtedness that has constituted an amount paid.

(3) *Requirement that property be returned.* Similarly, no transfer may have occurred where property is transferred under conditions that require its return upon the happening of an event that is certain to occur, such as the termination of employment. In such a case, whether there is, in fact, a transfer depends upon all the facts and circumstances. Factors which indicate that no transfer has occurred are described in paragraph (a) (4), (5), and (6) of this section.

(4) *Similarity to option.* An indication that no transfer has occurred is the extent to which the conditions relating to a transfer are similar to an option.

(5) *Relationship to fair market value.* An indication that no transfer has occurred is the extent to which the consideration to be paid the transferee upon surrendering the property does not approach the fair market value of the property at the time of surrender. For purposes of paragraph (a) (5) and (6) of this section, fair market value includes fair market value determined under the rules of § 1.83-5(a)(1), relating to the valuation of property subject to nonlapse restrictions. Therefore, the existence of a nonlapse restriction referred to in § 1.83-5(a)(1) is not a factor indicating no transfer has occurred.

(6) *Risk of loss.* An indication that no transfer has occurred is the extent to which the transferee does not incur the risk of a beneficial owner that the value of the property at the time of transfer will decline substantially. Therefore, for purposes of this (6), risk of decline in property value is not limited to the risk that any amount paid for the property may be lost.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* On January 3, 1971, X corporation sells for $500 to S, a salesman of X, 10 shares of stock in X corporation with a fair market value of $1,000. The stock is nontransferable and subject to return to the corporation (for $500) if S's sales do not reach a certain level by December 31, 1971. Disregarding the restriction concerning S's sales (since the restrictions is a lapse restriction), S's interest in the stock is that of a beneficial owner and therefore a transfer occurs on January 3, 1971.

*Example (2).* On November 17, 1972, W sells to E 100 shares of stock in W corporation with a fair market value of $10,000 in exchange for a $10,000 note without personal liability. The note requires E to make yearly payments of $2,000 commencing in 1973. E collects the dividends, votes the stock and pays the interest on the note. However, he makes no payments toward the face amount of the note. Because E has no personal liability on the note, and since E is making no payments towards the face amount of the note, the likelihood of E paying the full purchase price is in substantial doubt. As a result E has not incurred the risks of a beneficial owner that the value of the stock will decline. Therefore, no transfer of the stock has occurred on November 17, 1972, but an option to purchase the stock has been granted to E.

*Example (3).* On January 3, 1971, X corporation purports to transfer to E, an employee, 100 shares of stock in X corporation. The X stock is subject to the sole restriction that E must sell such stock to X on termination of employment for any reason for an amount which is equal to the excess (if any) of the book value of the X stock at termination of employment over book value on January 3, 1971. The stock is not transferable by E and the restrictions on transfer are stamped on the certificate. Under these facts and circumstances, there is no transfer of the X stock within the meeting of section 83.

*Example (4).* Assume the same facts as in example (3) except that E paid $3,000 for the stock and that the restriction required E upon termination of employment to sell the stock to M for the total amount of dividends that have been declared on the stock since September 2, 1971, or $3,000 whichever is higher. Again, under the facts and circumstances, no transfer of the X stock has occurred.

*Example (5).* On July 4, 1971, X corporation purports to transfer to G, an employee, 100 shares of X stock. The stock is subject to the sole restriction that upon termination of employment G must sell the stock to X for the greater of its fair market value at such time or $100, the amount G paid for the stock. On July 4, 1971 the X stock has a fair market value of $100. Therefore, G does not incur the risk of a beneficial owner that the value of the stock at the time of transfer ($100) will decline substantially. Under these facts and circumstances, no transfer has occurred.

(b) *Substantially vested and substantially nonvested property.* For purposes of section 83 and the regulations thereunder, property is substantially nonvested when it is subject to a substantial risk of forfeiture, within the meaning of paragraph (c) of this section, and is nontransferable, within the meaning of paragraph (d) of this section. Property is substantially vested for such purposes when it is either transferable or not subject to a substantial risk of forfeiture.

(c) *Substantial risk of forfeiture*—(1) *In general.* For purposes of section 83 and the regulations thereunder, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. A substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or the occurrence of a condition related to a purpose of the transfer, and the possibility of forfeiture is substantial if such condition is not satisfied.

Property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of such property to the employee upon the return of such property. The risk that the value of property will decline during a certain period of time does not constitute a substantial risk of forfeiture. A nonlapse restriction, standing by itself, will not result in a substantial risk of forfeiture.

(2) *Illustrations of substantial risks of forfeiture.* The regularity of the performance of services and the time spent in performing such services tend to indicate whether services required by a condition are substantial. The fact that the person performing services has the right to decline to perform such services without forfeiture may tend to establish that services are insubstantial. Where stock is transferred to an underwriter prior to a public offering and the full enjoyment of such stock is expressly or impliedly conditioned upon the successful completion of the underwriting, the stock is subject to a substantial risk of forfeiture. Where an employee receives property from an employer subject to a requirement that it be returned if the total earnings of the employer do not increase, such property is subject to a substantial risk of forfeiture. On the other hand, requirements that the property be returned to the employer if the employee is discharged for cause or for committing a crime will not be

considered to result in a substantial risk of forfeiture. An enforceable requirement that the property be returned to the employer if the employee accepts a job with a competing firm will not ordinarily be considered to result in a substantial risk of forfeiture unless the particular facts and circumstances indicate to the contrary. Factors which may be taken into account in determining whether a convenant not to compete constitutes a substantial risk of forfeiture are the age of the employee, the availability of alternative employment opportunities, the likelihood of the employee's obtaining such other employment, the degree of skill possessed by the employee, the employee's health, and the practice (if any) of the employer to enforce such covenants. Similarly, rights in property transferred to a retiring employee subject to the sole requirement that it be returned unless he renders consulting services upon the request of his former employer will not be considered subject to a substantial risk of forfeiture unless he is in fact expected to perform substantial services.

(3) *Enforcement of forfeiture condition.* In determining whether the possibility of forfeiture is substantial in the case of rights in property transferred to an employee of a corporation who owns a significant amount of the total combined voting power or value of all classes of stock of the employer corporation or of its parent corporation, there will be taken into account (i) the employee's relationship to other stockholders and the extent of their control, potential control and possible loss of control of the corporation, (ii) the position of the employee in the corporation and the extent to which he is subordinate to other employees, (iii) the employee's relationship to the officers and directors of the corporation, (iv) the person or persons who must approve the employee's discharge, and (v) past actions of the employer in enforcing the provisions of the restrictions. For example, if an employee would be considered as having received rights in property subject to a substantial risk of forfeiture, but for the fact that the employee owns 20 percent of the single class of stock in the transferor corporation, and if the remaining 80 percent of the class of stock is owned by an unrelated individual (or members of such an individual's family) so that the possibility of the corporation enforcing a restriction on such rights is substantial, then such rights are subject to a substantial risk of forfeiture. On the other hand, if 4 percent of the voting power of all the stock of a corporation is owned by the president of such corporation and the remaining stock is so diversely held by the public that the president, in effect, controls the corporation, then the possibility of the corporation enforcing a restriction on rights in property transferred to the president is not substantial, and such rights are not subject to a substantial risk of forfeiture.

(4) *Examples.* The rules contained in paragraph (c)(1) of this section may be illustrated by the following examples. In each example it is assumed that, if the conditions on transfer are not satisfied, the forfeiture provision will be enforced.

*Example (1).* On November 1, 1971, corporation X transfers in connection with the performance of services to E, an employee, 100 shares of corporation X stock for $90 per share. Under the terms of the transfer, E will be subject to a binding commitment to resell the stock to corporation X at $90 per share if he leaves the employment of corporation X for any reason prior to the expiration of a 2-year period from the date of such transfer. Since E must perform substantial services for corporation X and will not be paid more than $90 for the stock, regardless of its value, if he fails to perform such services during such 2-year period, E's rights in the stock are subject to a substantial risk of forfeiture during such period.

*Example (2).* On November 10, 1971, corporation X transfers in connection with the performance of services to a trust for the benefit of employees, $100x. Under the terms of the trust any child of an employee who is an enrolled full-time student at an accredited educational institution as a candidate for a degree will receive an annual grant of cash for each academic year the student completes as a student in good standing, up to a maximum of four years. E, an employee, has a child who is enrolled as a full-time student at an accredited college as a candidate for a degree. Therefore, E has a beneficial interest in the assets of the trust equalling the value of four cash grants. Since E's child must complete one year of college in order to receive a cash grant, E's interest in the trust assets are subject to a substantial risk of forfeiture to the extent E's child has not become entitled to any grants.

*Example (3).* On November 25, 1971, corporation X gives to E, an employee, in connection with his performance of services to corporation X, a bonus of 100 shares of corporation X stock. Under the terms of the bonus arrangement E is obligated to return the corporation X stock to corporation X if he terminates his employment for any reason. However, for each year occurring after November 25, 1971, during which E remains employed with corporation X, E ceases to be obligated to return 10 shares of the corporation X stock. Since in each year occurring after November 25, 1971, for which E remains employed he is not required to return 10 shares of corporation X's stock, E's rights in 10 shares each year for 10 years cease to be subject to a substantial risk of forfeiture for each year he remains so employed.

*Example (4).* (a) Assume the same facts as in example (3) except that for each year occurring after November 25, 1971, for which E remains employed with corporation X, X agrees to pay, in redemption of the bonus shares given to E if he terminates employment for any reason, 10 percent of the fair market value of each share of stock on the date of such termination of employment. Since corporation X will pay E 10 percent of the value of his bonus stock for each of the 10 years after November 25, 1971, in which he remains employed by X, and the risk of a decline in value is not a substantial risk of forfeiture, E's interest in 10 percent of such bonus stock becomes substantially vested in each of those years.

(b) The following chart illustrates the fair market value of the bonus stock and the fair market value of the portion of bonus stock that becomes substantially vested on November 25, for the following years:

| Year | Fair market value of | |
|---|---|---|
| | All stock | Portion of stock that becomes vested |
| 1972 | $200 | $20 |
| 1973 | 300 | 30 |
| 1974 | 150 | 15 |
| 1975 | 150 | 15 |
| 1976 | 100 | 10 |

If E terminates his employment on July 1, 1977, when the fair market value of the bonus stock is $100, E must return the bonus stock to X, and X must pay, in redemption of the bonus stock, $50 (50 percent of the value of the bonus stock on the date of termination of employment). E has recognized income under section 83(a) and § 1.83-1(a) with respect to 50 percent of the bonus stock, and E's basis in that portion of the stock equals the amount of income recognized, $90. Under § 1.83-1(e), the $40 loss E incurred upon forfeiture ($90 basis less $50 redemption payment) is an ordinary loss.

*Example (5).* On January 7, 1971, corporation X, a computer service company, transfers to E, 100 shares of corporation X stock for $50. E is a highly compensated salesman who sold X's products in a three-state area since 1960. At the time of transfer each share of X stock has a fair market value of $100. The stock is transferred to E in connection with his termination of employment with X. Each share of X stock is subject to the sole condition that E can keep such share only if he does not engage in competition with X for a 5-year period in the three-state area where E had previously sold X's products. E, who is 45 years old, has no intention of retiring from the work force. In order to earn a salary comparable to his current compensation, while preventing the risk of forfeiture from arising, E will have to expend a substantial amount of time and effort in another industry or market to establish the necessary business contacts. Thus, under these facts and circumstances E's rights in the stock are subject to a substantial risk of forfeiture.

(d) *Transferability of property.* For purposes of section 83 and the regulations thereunder, the rights of a person in property are transferable if such person can transfer any interest in the property to any person other than the transferor of the property, but only if the rights in such property of such transferee are not subject to a substantial risk of forfeiture. Accordingly, property is transferable if the

person performing the services or receiving the property can sell, assign, or pledge (as collateral for a loan, or as security for the performance of an obligation, or for any other purpose) his interest in the property to any person other than the transferor of such property and if the transferee is not required to give up the property or its value in the event the substantial risk of forfeiture materializes. On the other hand, property is not considered to be transferable merely because the person performing the services or receiving the property may designate a beneficiary to receive the property in the event of his death.

(e) *Property.* For purposes of section 83 and the regulations thereunder, the term "property" includes real and personal property other than money or an unfunded and unsecured promise to pay money in the future. The term also includes a beneficial interest in assets (including money) which are transferred or set aside from the claims of creditors of the transferor, for example, in a trust or escrow account. See, however, § 1.83-8(a) with respect to employee trusts and annuity plans subject to section 402(b) and section 403(c). In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered to be property. Where rights in a contract providing life insurance protection are substantially nonvested, see § 1.83-1(a)(2) for rules relating to the taxation of the cost of life insurance protection.

(f) *Property transferred in connection with the performance of services.* Property transferred to an employee or an independent contractor (or beneficiary thereof) in recognition of the performance of, or the refraining from performance of, services is considered transferred in connection with the performance of services within the meaning of section 83. The existence of other persons entitled to buy stock on the same terms and conditions as an employee, whether pursuant to a public or private offering may, however, indicate that in such circumstances a transfer to the employee is not in recognition of the performance of, or the refraining from performance of, services. The transfer of property is subject to section 83 whether such transfer is in respect of past, present, or future services.

(g) *Amount paid.* For purposes of section 83 and the regulations thereunder, the term "amount paid" refers to the value of any money or property paid for the transfer of property to which section 83 applies, and does not refer to any amount paid for the right to use such property or to receive the income therefrom. Such value does not include any stated or unstated interest payments. For rules regarding the calculation of the amount of unstated interest payments, see § 1.483-1(c). When section 83 applies to the transfer of property pursuant to the exercise of an option, the term "amount paid" refers to any amount paid for the grant of the option plus any amount paid as the exercise price of the option. For rules regarding the forgiveness of indebtedness treated as an amount paid, see § 1.83-4(c).

(h) *Nonlapse restriction.* For purposes of section 83 and the regulations thereunder, a restriction which by its terms will never lapse (also referred to as a "nonlapse restriction") is a permanent limitation on the transferability of property—

(i) Which will require the transferee of the property to sell, or offer to sell, such property at a price determined under a formula, and

(ii) Which will continue to apply to and be enforced against the transferee or any subsequent holder (other than the transferor).

A limitation subjecting the property to a permanent right of first refusal in a particular person at a price determined under a formula is a permanent nonlapse restriction. Limitations imposed by registration requirements of State or Federal security laws or similar laws imposed with respect to sales or other dispositions of stock or securities are not nonlapse restrictions. An obligation to resell or to offer to sell property transferred in connection with the performance of services to a specific person or persons at its fair market value at the time of such sale is not a nonlapse restriction. See § 1.83-5(c) for examples of nonlapse restrictions.

(i) *Lapse restriction.* For purposes of section 83 and the regulations thereunder, the term "lapse restriction" means a restriction other than a nonlapse restriction as defined in paragraph (h) of this section, and includes (but is not limited to) a restriction that carries a substantial risk of forfeiture.

### § 1.83-4 Special rules.

(a) *Holding period.* Under section 83(f), the holding period of transferred property to which section 83(a) applies shall begin just after such property is substantially vested. However, if the person who has performed the services in connection with which property is transferred has made an election under section 83(b), the holding period of such property shall begin just after the date such property is transferred. If property to which section 83 and the regulations thereunder apply is transferred at arm's length, the holding period of such property in the hands of the transferee shall be determined in accordance with the rules provided in section 1223.

(b) *Basis.* (1) Except as provided in paragraph (b)(2) of this section, if property to which section 83 and the regulations thereunder apply is acquired by any person (including a person who acquires such property in a subsequent transfer which is not at arm's length), while such property is still substantially nonvested, such person's basis for the property shall reflect any amount paid for such property and any amount includible in the gross income of the person who performed the services (including any amount so includible as a result of a disposition by the person who acquired such property.) Such basis shall also reflect any adjustments to basis provided under sections 1015 and 1016.

(2) If property to which § 1.83-1 applies is transferred at arm's length, the basis of the property in the hands of the transferee shall be determined under section 1012 and the regulations thereunder.

(c) *Forgiveness of indebtedness treated as an amount paid.* If an indebtedness that has been treated as an amount paid under § 1.83-1(a)(1)(ii) is subsequently cancelled, forgiven or satisfied for an amount less than the amount of such indebtedness, the amount that is not, in fact, paid shall be includible in the gross income of the service provider in the taxable year in which such cancellation, forgiveness or satisfaction occurs.

### § 1.83-5 Restrictions that will never lapse.

(a) *Valuation.* For purposes of section 83 and the regulations thereunder, in the case of property subject to a nonlapse restriction (as defined in § 1.83-3(h)), the price determined under the formula price will be considered to be the fair market value of the property unless established to the contrary by the Commissioner, and the burden of proof shall be on the commissioner with respect to such value. If stock in a corporation is subject to a nonlapse restriction which requires the transferee to sell such stock only at a formula price based on book value, a reasonable multiple of earnings or a reasonable combination thereof, the price so determined will ordinarily be regarded as determinative of the fair market value of such property for purposes of section 83. However, in certain circumstances the formula price will not be considered to be the fair market value of property subject to such a formula price restriction, even though the formula price restriction is a substantial factor in determining such value. For example, where the formula price is the current book value of stock, the book value of

the stock at some time in the future may be a more accurate measure of the value of the stock than the current book value of the stock for purposes of determining the fair market value of the stock at the time the stock becomes substantially vested.

(b) *Cancellation*—(1) *In general.* Under section 83(d)(2), if a nonlapse restriction imposed on property that is subject to section 83 is cancelled, then, unless the taxpayer establishes—

(i) That such cancellation was not compensatory, and

(ii) That the person who would be allowed a deduction, if any, if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as provided in paragraph (c)(2) of this section,

the excess of the fair market value of such property (computed without regard to such restriction) at the time of cancellation, over the sum of—

(iii) The fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(iv) The amount, if any, paid for the cancellation,

shall be treated as compensation for the taxable year in which such cancellation occurs. Whether there has been a noncompensatory cancellation of a nonlapse restriction under section 83(d)(2) depends upon the particular facts and circumstances. Ordinarily the fact that the employee or independent contractor is required to perform additional services or that the salary or payment of such a person is adjusted to take the cancellation into account indicates that such cancellation has a compensatory purpose. On the other hand, the fact that the original purpose of a restriction no longer exists may indicate that the purpose of such cancellation is non- compensatory. Thus, for example, if a so-called "buy-sell" restriction was imposed on a corporation's stock to limit ownership of such stock and is being cancelled in connection with a public offering of the stock, such cancellation will generally be regarded as noncompensatory. However, the mere fact that the employer is willing to forego a deduction under section 83(h) is insufficient evidence to establish a noncompensatory cancellation of a nonlapse restriction. The refusal by a corporation or shareholder to repurchase stock of the corporation which is subject to a permanent right of first refusal will generally be treated as a cancellation of a nonlapse restriction. The preceding sentence shall not apply where there is no nonlapse restriction, for example, where the price to be paid for the stock subject to the right of first refusal is the fair market value of the stock. Section 83(d)(2) and this (1) do not apply where immediately after the cancellation of a nonlapse restriction the property is still substantially nonvested and no section 83(b) election has been made with respect to such property. In such a case the rules of section 83(a) and § 1.83-1 shall apply to such property.

(2) *Evidence of noncompensatory cancellation.* In addition to the information necessary to establish the factors described in paragraph (b)(1) of this section, the taxpayer shall request the employer to furnish the taxpayer with a written statement indicating that the employer will not treat the cancellation of the nonlapse restriction as a compensatory event, and that no deduction will be taken with respect to such cancellation. The taxpayer shall file such written statement with his income tax return for the taxable year in which or with which such cancellation occurs.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* On November 1, 1971, X corporation whose shares are closely held and not regularly traded, transfers to E, an employee, 100 shares of X corporation stock subject to the condition that, if he desires to dispose of such stock during the period of his employment, he must resell the stock to his employer at its then existing book value. In addition, E or E's estate is obligated to offer to sell the stock at his retirement or death to his employer at its then existing book value. Under these facts and circumstances, the restriction to which the shares of X corporation stock are subject is a nonlapse restriction. Consequently, the fair market value of the X stock is includible in E's gross income as compensation for taxable year 1971. However, in determining the fair market value of the X stock, the book value formula price will ordinarily be regarded as being determinative of such value.

*Example (2).* Assume the facts are the same as in example (1), except that the X stock is subject to the condition that if E desires to dispose of the stock during the period of his employment he must resell the stock to his employer at a multiple of earnings per share that is in this case a reasonable approximation of value at the time of transfer to E. In addition, E or E's estate is obligated to offer to sell the stock at his retirement or death to his employer at the same multiple of earnings. Under these facts and circumstances, the restriction to which the X corporation stock is subject is a nonlapse restriction. Consequently, the fair market value of the X stock is includible in E's gross income for taxable year 1971. However, in determining the fair market value of the X stock, the multiple-of-earnings formula price will ordinarily be regarded as determinative of such value.

*Example (3).* On January 4, 1971, X corporation transfers to E, an employee, 100 shares of stock in X corporation. Each such share of stock is subject to an agreement between X and E whereby E agrees that such shares are to be held solely for investment purposes and not for resale (a so-called investment letter restriction). E's rights in such stock are substantially vested upon transfer, causing the fair market value of each share of X corporation stock to be includible in E's gross income as compensation for taxable year 1971. Since such an investment letter restriction does not constitute a nonlapse restriction, in determining the fair market value of each share, the investment letter restriction is disregarded.

*Example (4).* On September 1, 1971, X corporation transfers to B, an independent contractor, 500 shares of common stock in X corporation in exchange for B's agreement to provide services in the construction of an office building on property owned by X corporation. X corporation has 100 shares of preferred stock outstanding and an additional 500 shares of common stock outstanding. The preferred stock has a liquidation value of $1,000*x*, which is equal to the value of all assets owned by X. Therefore, the book value of the common stock in X corporation is $0. Under the terms of the transfer, if B wishes to dispose of the stock, B must offer to sell the stock to X for 150 percent of the then existing book value of B's common stock. The stock is also subject to a substantial risk of forfeiture until B performs the agreed-upon services. B makes a timely election under section 83(b) to include the value of the stock in gross income in 1971. Under these facts and circumstances, the restriction to which the shares of X corporation common stock are subject is a nonlapse restriction. In determining the fair market value of the X common stock at the time of transfer, the book value formula price would ordinarily be regarded as determinative of such value. However, the fair market value of X common stock at the time of transfer, subject to the book value restriction, is greater than $0 since B was willing to agree to provide valuable personal services in exchange for the stock. In determining the fair market value of the stock, the expected book value after construction of the office building would be given great weight. The likelihood of completion of construction would be a factor in determining the expected book value after completion of construction.

**§ 1.83-6 Deduction by employer.**

(a) *Allowance of deduction*—(1) *General rule.* In the case of a transfer of property in connection with the performance of services, or a compensatory cancellation of a nonlapse restriction described in section 83(d) and § 1.83-5, a deduction is allowable under sections 162 or 212, to the person for whom such services were performed. The amount of the deduction is equal to the amount includible as compensation in the gross income of the service provider, under section 83 (a), (b), or (d)(2), but only to the extent such amount meets the requirements of sections 162 or 212 and the regulations thereunder. Such deduction shall be allowed only for the taxable year of such person in which or with which ends the taxable year of the service provider in which such amount is includible as compensation. For purposes of this paragraph, any amount excluded from gross income under section 79 or section 101(b) or subchapter N shall be considered to have been includible in gross income.

(2) *Special rule.* If the service provider is an employee of the person for whom services were performed, such deduction is allowed for the taxable year of the employer in which or with which ends the taxable year of the employee in which such amount is includible as compensation, but only if the employer deducts and withholds upon such amount in accordance with section 3402. A deduction will not be disallowed under the preceeding sentence if the employer does not withhold and deduct upon amounts excluded from gross income, such as amounts excluded under section 79, section 101(b), or subchapter N. For taxable years of employees ending before July 21, 1978, such deduction is allowed for the taxable year of the employer in which or with which ends the taxable year of the employee in which such amount is includible as compensation, if either the employer deducts and withholds upon such amount in accordance with section 3402 or the employee includes such amount in gross income as compensation for such taxable year of the employee.

(3) *Exceptions.* Where property is substantially vested upon transfer, the deduction shall be allowed to such person in accordance with his method of accounting (in conformity with sections 446 and 461). In the case of a transfer to an employee benefit plan described in § 1.162-10(a) or a transfer to an employees' trust or annuity plan described in section 404(a)(5) and the regulations thereunder, section 83(h) and this section do not apply.

(4) *Capital expenditure, etc.* No deduction is allowed under section 83(h) to the extent that the transfer of property constitutes a capital expenditure, an item of deferred expense, or an amount properly includible in the value of inventory items. In the case of a capital expenditure, for example, the basis of the property to which such capital expenditure relates shall be increased at the same time and to the same extent as any amount includible in the employee's gross income in respect of such transfer. Thus, for example, no deduction is allowed to a corporation in respect of a transfer of its stock to a promoter upon its organization, notwithstanding that such promoter must include the value of such stock in his gross income in accordance with the rules under section 83.

(b) *Recognition of gain or loss.* Except as provided in section 1032, at the time of a transfer of property in connection with the performance of services the transferor recognizes gain to the extent that the transferor receives an amount that exceeds the transferor's basis in the property. In addition, at the time a deduction is allowed under section 83(h) and paragraph (a) of this section, gain or loss is recognized to the extent of the difference between (i) the sum of the amount paid plus the amount allowed as a deduction under section 83(h), and (ii) the sum of the taxpayer's basis in the property plus any amount recognized pursuant to the previous sentence.

(c) *Forfeitures.* If, under section 83(h) and paragraph (a) of this section, a deduction, an increase in basis, or a reduction of gross income was allowable (disregarding the reasonableness of the amount of compensation) in respect of a transfer of property and such property is subsequently forfeited, the amount of such deduction, increase in basis or reduction of gross income shall be includible in the gross income of the person to whom it was allowable for the taxable year of forfeiture. The basis of such property in the hands of the person to whom it is forfeited shall include any such amount includible in the gross income of such person, as well as any amount such person pays upon forfeiture.

(d) *Special rules for transfers by shareholders*—(1) *Transfers.* If a shareholder of a corporation transfers property to an employee of such corporation or to an independent contractor (or to a beneficiary thereof), in consideration of services performed for the corporation, the transaction shall be considered to be a contribution of such property to the capital of such corporation by the shareholder, and immediately thereafter a transfer of such property by the corporation to the employee or independent contractor under paragraphs (a) and (b) of this section. For purposes of this (1), such a transfer will be considered to be in consideration for services performed for the corporation if either the property transferred is substantially nonvested at the time of transfer or an amount is includible in the gross income of the employee or independent contractor at the time of transfer under § 1.83-1(a)(1) or § 1.83-2(a). In the case of such a transfer, any money or other property paid to the shareholder for such stock shall be considered to be paid to the corporation and transferred immediately thereafter by the corporation to the shareholder as a distribution to which section 302 applies.

(2) *Forfeiture.* If, following a transaction described in paragraph (d)(1) of this section, the transferred property is forfeited to the shareholder, paragraph (c) of this section shall apply both with respect to the shareholder and with respect to the corporation. In addition, the corporation shall in the taxable year of forfeiture be allowed a loss (or realize a gain) to offset any gain (or loss) realized under paragraph (b) of this section. For example, if a shareholder transfers property to an employee of the corporation as compensation, and as a result the shareholder's basis of $\$200x$ in such property is allocated to his stock in such corporation and such corporation recognizes a short-term capital gain of $\$800x$, and is allowed a deduction of $\$1,000x$ on such transfer, upon a subsequent forfeiture of the property to the shareholder, the shareholder shall take $\$200x$ into gross income, and the corporation shall take $\$1,000x$ into gross income and be allowed a short-term capital loss of $\$800x$.

(e) *Options.* [Reserved.]

(f) *Reporting requirements.* [Reserved.]

### § 1.83-7 Taxation of nonqualified stock options.

(a) *In general.* If there is granted to an employee or independent contractor (or beneficiary thereof) in connection with the performance of services, an option to which section 421 (relating generally to certain qualified and other options) does not apply, section 83(a) shall apply to such grant if the option has a readily ascertainable fair market value (determined in accordance with paragraph (b) of this section) at the time the option is granted. The person who performed such services realizes compensation upon such grant at the time and in the amount determined under section 83(a). If section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) or 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option.

(b) *Readily ascertainable defined*—(1) *Actively traded on an established market.* Options have a value at the time they are granted, but that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for pur-

poses of this section by applying the rules of valuation set forth in § 20.2031-2.

(2) *Not actively traded on an established market.* When an option is not actively traded on an established market, it does not have a readily ascertainable fair market value unless its fair market value can otherwise be measured with reasonable accuracy. For purposes of this section, if an option is not actively traded on an established market, the option does not have a readily ascertainable fair market value when granted unless the taxpayer can show that all of the following conditions exist:

(i) The option is transferable by the optionee;

(ii) The option is exerciseable immediately in full by the optionee;

(iii) The option or the property subject to the option is not subject to any restriction or condition (other than a lien or other condition to secure the payment of the purchase price) which has a significant effect upon the fair market value of the option; and

(iv) The fair market value of the option privilege is readily ascertainable in accordance with paragraph (b)(3) of this section.

(3) *Option privilege.* The option privilege in the case of an option to buy is the opportunity to benefit during the option's exercise period from any increase in the value of property subject to the option during such period, without risking any capital. Similarly, the option privilege in the case of an option to sell is the opportunity to benefit during the exercise period from a decrease in the value of property subject to the option. For example, if at some time during the exercise period of an option to buy, the fair market value of the property subject to the option is greater than the option's exercise price, a profit may be realized by exercising the option and immediately selling the property so acquired for its higher fair market value. Irrespective of whether any such gain may be realized immediately at the time an option is granted, the fair market value of an option to buy includes the value of the right to benefit from any future increase in the value of the property subject to the option (relative to the option exercise price), without risking any capital. Therefore, the fair market value of an option is not merely the difference that may exist at a particular time between the option's exercise price and the value of the property subject to the option, but also includes the value of the option privilege for the remainder of the exercise period. Accordingly, for purposes of this section, in determining whether the fair market value of an option is readily ascertainable, it is necessary to consider whether the value of the entire option privilege can be measured with reasonable accuracy. In determining whether the value of the option privilege is readily ascertainable, and in determining the amount of such value when such value is readily ascertainable, it is necessary to consider—

(i) Whether the value of the property subject to the option can be ascertained;

(ii) The probability of any ascertainable value of such property increasing or decreasing; and

(iii) The length of the period during which the option can be exercised.

(c) *Reporting requirements.* [Reserved]

**§ 1.83-8 Applicability of section and transitional rules.**

(a) *Scope of section 83.* Section 83 is not applicable to—

(1) A transaction concerning an option to which section 421 applies;

(2) A transfer to or from a trust described in section 401(a) for the benefit of employees or their beneficiaries, or a transfer under an annuity plan that meets the requirements of section 404(a)(2) for the benefit of employees or their beneficiaries;

(3) The transfer of an option without a readily ascertainable fair market value (as defined in § 1.83-7(b)(1)); or

(4) The transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant. Section 83 applies to a transfer to or from a trust or under an annuity plan for the benefit of employees, independent contractors, or their beneficiaries (except as provided in paragraph (a)(2) of this section), but to the extent a transfer is subject to section 402(b) or 403(c), section 83 applies to such a transfer only as provided for in section 402(b) or 403(c).

(b) *Transitional rules*—(1) *In general.* Except as otherwise provided in this paragraph, section 83 and the regulations thereunder shall apply to property transferred after June 30, 1969.

(2) *Binding written contracts.* Section 83 and the regulations thereunder shall not apply to property transferred pursuant to a binding written contract entered into before April 22, 1969. For purposes of this paragraph, a binding written contract means only a written contract under which the employee or independent contractor has an enforceable right to compel the transfer of property or to obtain damages upon the breach of such contract. A contract which provides that a person's right to such property is contingent upon the happening of an event (including the passage of time) may satisfy the requirements of this paragraph. However, if the event itself, or the determination of whether the event has occurred, rests with the board of directors or any other individual or group acting on behalf of the employer (other than an arbitrator), the contract will not be treated as giving the person an enforceable right for purposes of this paragraph.

The fact that the board of directors has the power (either expressly or impliedly) to terminate employment of an officer pursuant to a contract that contemplates the completion of services over a fixed or ascertainable period does not negate the existence of a binding written contract. Nor will the binding nature of the contract be negated by a provision in such contract which allows the employee or independent contractor to terminate the contract for any year and receive cash instead of property if such election would cause a substantial penalty, such as a forfeiture of part or all of the property received in connection with the performance of services in an earlier year.

(3) *Options granted before April 22, 1969.* Section 83 shall not apply to property received upon the exercise of an option granted before April 22, 1969.

(4) *Certain written plans.* Section 83 shall not apply to property transferred (whether or not by the exercise of an option) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969. A plan is to be considered as having been adopted and approved before July 1, 1969, only if prior to such date the transferor of the property undertook an ascertainable course of conduct which under applicable State law does not require further approval by the board of directors or the stockholders of any corporation. For example, if a corporation transfers property to an employee in connection with the performance of services pursuant to a plan adopted and approved before July 1, 1969, by the board of directors of such corporation, it is not necessary that the stockholders have adopted or approved such plan if State law does not require such approval. However, such approval is necessary if required by the articles of incorporation or the bylaws or if, by its terms, such plan will not become effective without such approval.

(5) *Certain options granted pursuant to a binding written contract.* Section 83 shall not apply to property transferred before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract (as defined in paragraph (b)(2) of this section) entered into before April 22, 1969, between a corporation and the transferor of such property requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to pur-

chase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969.

(6) *Certain tax free exchanges.* Section 83 shall not apply to property transferred in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or in exchange for property to which section 83 does not apply (by reason of paragraphs (1), (2), (3), or (4) of section 83(i)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject.

**§ 1.402(b) [Deleted]**

Par. 4. Section 1.402(b) is deleted.

Par. 5. Section 1.402(b)-1 is amended to read as follows:

**§ 1.402(b)-1 Treatment of beneficiary of trust not exempt under section 501(a).**

(a) *Taxation by reason of employer contributions made after August 1, 1969*—(1) *Taxation of contributions.* Section 402(b) provides rules for taxing an employee on contributions made on his behalf by an employer to an employees' trust that is not exempt under section 501(a). In general, any such contributions made after August 1, 1969, during a taxable year of the employer which ends within or with a taxable year of the trust for which it is not so exempt shall be included as compensation in the gross income of the employee for his taxable year during which the contribution is made, but only to the extent that the employee's interest in such contribution is substantially vested at the time the contribution is made. The preceding sentence does not apply to contracts referred to in the transitional rule of paragraph (d)(1) (ii) or (iii) of this section. For the definition of the terms "substantially vested" and "substantially nonvested" see § 1.83-3(b).

(2) *Determination of amount of employer contributions.* If, for an employee, the actual amount of employer contributions referred to in paragraph (a)(1) of this section for any taxable year of the employee is not known, such amount shall be either an amount equal to the excess of—

(i) The amount determined in accordance with the formula described in § 1.403(b)-1(d)(4) as of the end of such taxable year, over

(ii) The amount determined in accordance with the formula described in § 1.403(b)-1(d)(4) as of the end of the prior taxable year,

or the amount determined under any other method utilizing recognized actuarial principles that are consistent with the provisions of the plan under which such contributions are made and the method adopted by the employer for funding the benefits under the plan.

(b) *Taxability of employee when rights under nonexempt trust change from nonvested to vested*—(1) *In general.* If rights of an employee under a trust become substantially vested during a taxable year of the employee (ending after August 1, 1969), and a taxable year of the trust for which it is not exempt under section 501(a) ends with or within such year, the value of the employee's interest in the trust on the date of such change shall be included in his gross income for such taxable year, to the extent provided in paragraph (b)(3) of this section. When an employees' trust that was exempt under section 501(a) ceases to be so exempt, an employee shall include in his gross income only amounts contributed to the trust during a taxable year of the employer that ends within or with a taxable year of the trust in which it is not so exempt (to the same extent as if the trust had not been so exempt in all prior taxable years).

(2) *Value of an employee's interest in a trust.* (i) For purposes of this section, the term "the value of an employee's interest in a trust" means the amount of the employee's beneficial interest in the net fair market value of all the assets in the trust as of any date on which some or all of the employee's interest in the trust becomes substantially vested. The net fair market value of all the assets in the trust is the total amount of the fair market values (determined without regard to any lapse restriction, as defined in § 1.83-3(h)) of all the assets in the trust, less the amount of all the liabilities (including taxes) to which such assets are subject or which the trust has assumed (other than the rights of any employee in such assets), as of the date on which some or all of the employee's interest in the trust becomes substantially vested.

(ii) If a separate account in a trust for the benefit of two or more employees is not maintained for each employee, the value of an employee's interest in such trust shall be determined in accordance with the formula described in § 403(b)-1(d)(4) or any other method utilizing recognized actuarial principles that are consistent with the provisions of the plan under which the contributions are made and the method adopted by the employer for funding the benefits under the plan.

(iii) If there is no valuation of a nonexempt trust's assets on the date of the change referred to in paragraph (b)(1) of this section, the value of an employee's interest in such trust is determined by taking the weighted average of the values on the nearest valuation dates occurring before and after the date of such change. The average is to be determined in the manner described in § 20.2031-2(b)(1).

(3) *Extent to which value of an employee's interest is includible in gross income.* For purposes of paragraph (b)(1) of this section, there shall be included in the gross income of the employee for his taxable year in which his rights under the trust become substantially vested only that portion of the value of his interest in the trust that is attributable to contributions made by the employer after August 1, 1969. However, the preceding sentence shall not apply—

(i) To the extent such value is attributable to a contribution made on the date of such change, and

(ii) To the extent such value is attributable to contributions described in paragraph (d)(1) (ii) or (iii) of this section (relating to contributions made pursuant to a binding contract entered into before April 22, 1969).

For purposes of this (3), if the value of an employee's interest in a trust which is attributable to contributions made by the employer after August 1, 1969, is not known, it shall be deemed to be an amount which bears the same ratio to the value of the employee's interest as the contributions made by the employer after such date bear to the total contributions made by the employer.

(4) *Partial vesting.* For purposes of paragraph (b)(1) of this section, if only part of an employee's interest in the trust becomes substantially vested during any taxable year, then only the corresponding part of the value of the employee's interest in such trust is includible in his gross income for such year. In such a case, it is first necessary to compute, under the rules in paragraphs (b) (1) and (2) of this section, the amount that would be includible if his entire interest had changed to a substantially vested interest during such year. The amount that is includible under this paragraph (4) is the amount determined under the preceding sentence multiplied by the percent of the employee's interest which became substantially vested during the taxable year.

(5) *Basis.* The basis of any employee's interest in a trust to which this section applies shall be increased by the amount included in his gross income under this section.

(6) *Treatment as owner of trust.* In general, a beneficiary of a trust to which this section applies may not be considered to be the owner under subpart E, part I, subchapter J, chapter I of the Code of any portion of such trust which is attributable to contributions to such trust made by the employer after August 1, 1969, or to incidental contributions made by the employee after such date. However, where contributions made by the employee are not incidental when compared to contributions made by the employer, such beneficiary shall be considered to be the owner of the portion of the trust attributable to contributions made by the employee, if the applicable requirements of such subpart E are satisfied. For purposes of this paragraph (6), contributions made by an employee are not incidental when compared to contributions made by the employer if the employee's total contributions as of any date exceed the employer's total contributions on behalf of the employee as of such date.

(7) *Example.* The provisions in this paragraph may be illustrated by the following example:

*Example.* On January 1, 1968 M corporation establishes an employees' trust, which is not exempt under section 501(a), for some of its employees, including A, reserving the right to discontinue contributions at any time. M corporation contributes $5,000 on A's behalf to the trust on February 1, 1968. At the time of contribution 50 percent of A's interest was substantially vested. On January 1, 1971, and January 1, 1974, M corporation makes additional $5,000 contributions to the trust on A's behalf. A's interest in the trust changed from a 50 percent substantially vested interest to a 100 percent substantially vested interest in the trust on December 31, 1974. Assume that the value of A's interest in the trust on December 31, 1974, which is attributable to employer contributions made after August 1, 1969, is calculated to be $11,000 under paragraph (b)(3) of this section. The amount includible in A's gross income for 1971 and 1974 is computed as follows:

(i) Amount of M corporation's contribution made on January 1, 1971, to the trust which is includible in A's gross income under paragraph (b)(1) of this section (50 percent substantially vested interest in the trust times $5,000 contribution)—$2,500.

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(i) Amount of M corporation's contribution made on January 1, 1974, to the trust which is includible in A's gross income under paragraph (b)(1) of this section (50 percent substantially vested interest in the trust times $5,000 contribution)—$2,500.

(ii) Amount which would have been includible if A's entire interest had changed to a substantially vested interest (value of employee's interest in the trust attributable to employer contributions made after August 1, 1969—$11,000.

(iii) Percent of A's interest that became substantially vested on December 31, 1974—50 percent.

(iv) Amount includible in A's gross income for 1974 in respect of his percentage change from a substantially nonvested to a substantially vested interest in the trust (50 percent of $11,000)—$5,500.

(v) Total amount includible in A's gross income for 1974 ((i) plus (iv))—$8,000.

(c) *Taxation of distributions from trust not exempt under section 501 (a)—(1) In general.* Any amount actually distributed or made available to any distributee by an employees' trust in a taxable year in which it is not exempt under section 501(a) shall be taxable under section 72 (relating to annuities) to the distributee in the taxable year in which it is so distributed or made available. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). If, for example, the distribution from such a trust consists of an annuity contract, the amount of the distribution shall be considered to be the entire value of the contract at the time of distribution. Such value is includible in the gross income of the distributee to the extent that such value exceeds the investment in the contract, determined by applying sections 72 and 101(b). The distributions by such a trust shall be taxed as provided in section 72 whether or not the employee's rights to the contributions become substantially vested beforehand. For rules relating to the treatment of employer contributions to a nonexempt trust as part of the consideration paid by the employee, see section 72(f). For rules relating to the treatment of the limited exclusion allowable under section 101(b)(2)(D) as additional consideration paid by the employee, see the regulations under that section.

(2) *Distributions before annuity starting date.* Any amount distributed or made available to any distributee before the annuity starting date (as defined in section 72(c)(4)) by an employees' trust in a taxable year in which it is not exempt under section 501(a) shall be treated as distributed in the following order—

(i) First, from that portion of the employee's interest in the trust attributable to contributions made by the employer after August 1, 1969 (other than those referred to in paragraph (d)(1)(ii) or (iii) of this section) that has not been previously includible in the employee's gross income, to the extent that such a distribution is permitted under the trust (or the plan of which the trust is a part);

(ii) Second, from that portion of the employee's interest in the trust attributable to contributions made by the employer on or before August 1, 1969 (or contributions referred to in paragraph (d)(1)(ii) or (iii) of this section);

(iii) Third, from the remaining portion of the employee's interest in the trust attributable to contributions made by the employer.

If the employee has made contributions to the trust, amounts attributable thereto shall be treated as distributed prior to any amounts attributable to the employer's contributions, to the extent provided by the trust (or the plan of which the trust is a part). However, the portion of such amounts attributable to income earned on the employee's contributions made after August 1, 1969, shall be treated as distributed prior to any return of such contributions.

(d) *Taxation by reason of employer contributions made on or before August 1, 1969.* (1) Except as provided in section 402(d) (relating to taxable years beginning before January 1, 1977), any contribution to a trust made by an employer on behalf of an employee—

(i) On or before August 1, 1969, or

(ii) After such date, pursuant to a binding contract (as defined in § 1.83-3 (b)(2)) entered into before April 22, 1969, or

(iii) After August 1, 1969, pursuant to a written plan in which the employee participated on April 22, 1969, and under which the obligation of the employer on such date was essentially the same as under a binding written contract, during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt under section 501 (a) shall be included in income of the employee for his taxable year during which the contribution is made, if the employee's beneficial interest in the contribution is nonforfeitable at the time the contribution is made. If the employee's beneficial interest in the contribution is forfeitable at the time the contribution is made, even though his interest becomes nonforfeitable later the amount of such contribution is not required to be included in the income of the employee at the time his interest becomes nonforfeitable.

(2)(i) An employee's beneficial interest in the contribution is nonforfeitable, within the meaning of sections 402(b), 403(c), and 404(a)(5) prior to the amendments made thereto by the Tax Reform Act of 1969 and section 403(b), at the time the contribution is made if there is no contingency under the plan that may cause the employee to lose his rights in the contribution. Similarly, an employee's rights under an annuity contract purchased for him by his employer change from forfeitable to non- forfeitable rights within the meaning of section 403(d) prior to the repeal thereof by the Tax Reform Act of 1969 at that time when, for the first time, there is no contingency which may cause the employee

to lose his rights under the contract. For example, if under the terms of a pension plan, an employee upon termination of his services before the retirement date, whether voluntarily or involuntarily, is entitled to a deferred annuity contract to be purchased with the employer's contributions made on his behalf, or is entitled to annuity payments which the trustee is obligated to make under the terms of the trust instrument based on the contributions made by the employer on his behalf, the employee's beneficial interest in such contributions is nonforfeitable.

(ii) On the other hand, if, under the terms of a pension plan, an employee will lose the right to any annuity purchased from, or to be provided by, contributions made by the employer if his services should be terminated before retirement, his beneficial interest in such contributions is forfeitable.

(iii) The mere fact that an employee may not live to the retirement date, or may live only a short period after the retirement date, and may not be able to enjoy the receipt of annuity or pension payments, dos not make his beneficial interest in the contributions made by the employer on his behalf forfeitable. If the employer's contributions have been irrevocably applied to purchase an annuity contract for the employee, or if the trustee is obligated to use the employer's contributions to provide an annuity for the employee provided only that the employee is alive on the dates the annuity payments are due, the employee's rights in the employer's contributions are nonforfeitable.

**§ 1.403(c) [Deleted]**

Par. 6. Section 1.403(c) is deleted.

Par. 7. Section 1.403(c)-1 is amended to read as follows:

**§ 1.403(c)-1 Taxability of beneficiary under a nonqualified annuity.**

(a) *Taxability of vested interest in premiums.* If after August 1, 1969, an employer (whether or not exempt under section 501(a) or 521(a)) pays premiums for an annuity contract for the benefit of an employee, the amount of such premiums shall be included as compensation in the gross income of the employee for the taxable year during which such premiums are paid, but only to the extent that the employee's rights in such premiums are substantially vested (as defined in § 1.83-3(b)) at the time such premiums are paid. The preceding sentence shall not apply to contracts referred to in the transitional rule of paragraph (d) (1), (ii), or (iii) of this section, or to premiums subject to § 1.403(a)-1(a) or excludible under § 1.403(b)-1(b). If an employer has purchased annuity contracts and transferred them to a trust (other than one described in section 401(a)) that is to provide annuity contracts or benefits for his employees, the amounts so paid shall be treated as contributions to a trust described in section 402(b). For the rules relating to the taxation of the cost of life insurance protection when rights in a life insurance contract are substantially nonvested, see §1.83-1(a)(2).

(b) *Taxability of employee when rights under annuity contract change from nonvested to vested*—(1) *In general.* If, during a taxable year of an employee ending after August 1, 1969, the rights of such employee under an annuity contract purchased for him by an employer (whether or not exempt under section 501(a) or 521(a)) become substantially vested, the value of the annuity contract on the date of such change shall be included in the employee's gross income for such year, to the extent provided in paragraph (b)(2) of this section. The preceding sentence shall not apply, however, to an annuity contract purchased and held as part of a plan which met at the time of such purchase, and continues to meet, the requirements of section 404(a)(2) or an annuity contract referred to in paragraph (d)(1) (ii) or (iii) of this section. For purposes of this section, the value of an annuity contract on the date the employee's rights become substantially vested means the cash surrender value of such contract on such date.

(2) *Extent to which value of annuity contract is includible in employee's gross income.* For purposes of paragraph (b)(1) of this section, the only amount includible in the gross income of the employee is that portion of the value of the contract on the date of the change that is attributable to premiums which were paid by the employer after August 1, 1969, and which were not excludible from the employee's gross income under §1.403(b)-1(b). However, the includible portion does not include—

(i) The value attributable to a premium paid on the date of such change, and

(ii) The value attributable to premiums described in the transitional rule of paragraph (d)(1) (ii) or (iii) of this section.

See § 1.403(b)-1(b)(2) for the treatment of an amount otherwise includible in gross income under section 403(c) as an employer contribution for purposes of the exclusion under section 403(b).

(3) *Partial vesting.* If, during any taxable year of an employee, only part of his beneficial interest in an annuity contract becomes substantially vested, then only the corresponding part of the value of the annuity contract on the date of such change is includible in the employee's gross income for such taxable year. In such a case, it is first necessary to compute, under the rules in paragraphs (b) (1) and (2) of this section but without regard to any exclusion allowable under § 1.403(b)-1(b), the amount which would be includible in the employee's gross income for the taxable year if his entire beneficial interest in the annuity contract had changed to a substantially vested interest during such year. The amount that is includible under this (3) (without regard to the section 403(b) exclusion) is equal to the amount determined under the preceding sentence multiplied by the percent of the emplolyee's beneficial interest which became substantially vested during the taxable year.

(c) *Amounts paid or made available under an annuity contract.* The amounts paid or made available to the employee under an annuity contract subject to this section shall be included in the gross income of the employee for the taxable year in which paid or made available, as provided in section 72 (relating to annuities). Such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). For rules relating to the treatment of employer contributions as part of the consideration paid by the employee, see section 72(f). See also section 101(b)(2)(D) for rules relating to the treatment of the limited exclusion provided thereunder as part of the consideration paid by the employee.

(d) *Taxability of beneficiary under a nonqualified annuity on or before August 1, 1969.* (1) Except as provided in section 402(d) (relating to taxable years beginning before January 1, 1977), if an employer purchases an annuity contract and if the amounts paid for the contract—

(i) On or before August 1, 1969, or

(ii) After such date, if pursuant to a binding written contract (as defined in § 1.83-8(b)(2)) entered into before April 22, 1969, or

(iii) After August 1, 1969, pursuant to a written plan in which the employee participated on April 22, 1969 and under which the obligation of the employer is essentially the same as under a binding written contract, are not subject to paragraph (a) of § 1.403(a)-1 or paragraph (a) of § 1.403(b)-1, the amount of such contribution shall, to the extent it is not excludible under paragraph (b) of § 1.403(b)-1, be included in the income of the employee for the taxable year during which such contribution is made if, at the time the contribution is made, the employee's rights under the annuity contract are nonforfeitable, except for failure to pay future premiums. If the annuity contract was purchased by an

employer which is not exempt from tax under section 501(a) or section 521(a), and if the employee's rights under the annuity contract in such a case were forfeitable at the time the employer's contribution was made for the annuity contract, even though they become nonforfeitable later the amount of such contribution is not required to be included in the income of the employee at the time his rights under the contract become nonforfeitable. On the other hand, if the annuity contract is purchased by an employer which is exempt from tax under section 501(a) or section 521(a), all or part of the value of the contract may be includible in the employee's gross income at the time his rights under the contract become nonforfeitable (see section 403(d) prior to the repeal thereof by the Tax Reform Act of 1969 and the regulations thereunder). As to what constitutes nonforfeitable rights of an employee, see § 1.402(b)-1(d)(2). The amounts received by or made available to the employee under the annuity contract shall be included in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to such amounts. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). For rules relating to the treatment of employer contributions as part of the consideration paid by the employee, see section 72(f). See also section 101(b)(2)(D) for rules relating to the treatment of the limited exclusion provided thereunder as part of the consideration paid by the employee.

(2) If an employer has purchased annuity contracts and transferred them to a trust, or if an employer has made contributions to a trust for the purpose of providing annuity contracts for his employees as provided in section 402(d) (see paragraph (a) of § 1.402(d)-1), the amount so paid or contributed is not required to be included in the income of the employee, but any amount received by or made available to the employee under the annuity contract shall be includible in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to any amount received by or made available to the employee under the annuity contract. For taxable years beginning after December 31, 1963, amounts received by or made available to the employee under the annuity contract may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). In such case the amount paid or contributed by the employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 72 unless the employee has paid income tax for any taxable year beginning before January 1, 1949, with respect to such payment or contribution by the employer for such year and such tax is not credited or refunded to the employee. In the event such tax has been paid and not credited or refunded the amount paid or contributed by the employer for such year shall constitute consideration paid by the employee for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under section 72.

(3) For taxable years beginning before January 1, 1958, the provisions contained in section 403(c) prior to the amendment made thereto by the Tax Reform Act of 1969 were included in section 403(b) of the Internal Revenue Code of 1954. Therefore, the regulations contained in this paragraph shall, for such taxable years, be considered as the regulations under section 403(b) as in effect for such taxable years. For the rules with respect to contributions paid after August 1, 1969, see paragraphs (a), (b), and (c) of this section.

**§ 1.403(d) [Deleted]**

Par. 8. Section 1.403(d) is deleted.

Par. 9. Section 1.403(d)-1 is amended by revising paragraph (a) and paragraph (c)(2) to read as follows:

**§ 1.403(d)-1 Taxability of employee when rights under contracts purchased by exempt organizations change from forfeitable to nonforfeitable.**

(a) *In general.* The provisions of section 403(d), repealed by section 321(b) of the Tax Reform Act of 1969 (83 Stat. 571), applied for taxable years beginning after December 31, 1957, only with respect to amounts paid for an annuity contract—

(1) On or before August 1, 1969, or

(2) After such date, if pursuant to a binding written contract (as defined in § 1.83-8(b)(2)) entered into before April 22, 1969, or

(3) After August 1, 1969, pursuant to a written plan in which the employee participated on April 22, 1969, and under which the obligation of the employer is essentially the same as under a binding written contract.

If, during a taxable year of an employee beginning after December 31, 1957, the rights of such employee under an annuity contract purchased for him by an employer which is exempt from tax under section 501(a) or 521(a) change from forfeitable to nonforfeitable rights, then (except in the case of contracts to which § 1.403(c)-1(b) applies for taxable years ending after August 1, 1969) the value of such annuity contract on the date of such change shall be included in the employee's gross income for such taxable year, to the extent provided in paragraph (b) of this section. However, the preceding sentence does not apply to an annuity contract purchased and held as part of a plan that at the time of such purchase and at all times thereafter meets the requirements of section 404(a)(2). For purposes of this section, the value of an annuity contract on the date the employee's rights change from forfeitable to nonforfeitable rights means the cash surrender value of such contract on such date. As to what constitutes nonforfeitable rights of an employee, see § 1.402(b)-1(d)(2). For the rules with respect to amounts paid after August 1, 1969, under an annuity contract purchased for an employee by an employer which is exempt from tax under section 501(a) or 521(a), see generally section 403(c) and the regulations thereunder.

* * * * *

(c) *Partial vesting.* * * *

* * * * *

(2) *Example.* The provisions in paragraph (c)(1) of this section may be illustrated by the following example:

*Example.* X organization purchased an annuity contract for A, one of its employees who reports his income on a calendar year basis. X contributed ⅓ of the amount necessary to purchase the contract before January 1, 1958, and the remaining ⅔ after December 31, 1957. At the time of the contributions, X was an organization exempt from tax under section 501(a) and A's rights under the contract were forfeitable. The annuity contract was not purchased as part of a qualified plan and A made no contributions toward the purchase of the contract. On December 31, 1965, 50 percent of A's interest in the contract changed from a forfeitable to a nonforfeitable interest, and on December 31, 1968, the remaining 50 percent of A's interest in the contract changed to a nonforfeitable interest. The cash surrender value of the contract was $9,900 on December 31, 1965, and $12,000 on December 31, 1968. The amount includible in A's gross income for 1965 and 1968 is computed as follows—

1965

(i) Amount which would have been includible if A's entire interest had changed to a

nonforfeitable interest (cash surrender value of contract on December 31, 1965, attributable to contributions made after December 31, 1957), ⅔ × $9,900, $6,600.

(ii) Percent of A's interest that changed to a nonforfeitable interest on December 31, 1965, 50 percent.

(iii) Amount includible in A's gross income for 1965 ((ii) × (i)), $3,300.

1968

(iv) Amount which would have been includible if A's entire interest had changed to a nonforfeitable interest (cash surrender value of contract on December 31, 1968, attributable to contributions made after December 31, 1957), ⅔ × $12,000, $8,000.

(v) Percent of A's interest that changed to a nonforfeitable interest on December 31, 1968, 50 percent.

(vi) Amount includible in A's gross income for 1968 ((v) × (iv)), $4,000.

If, on December 31, 1965, X is an organization described in section 501(c)(3) and exempt from tax under section 501(a), then only so much of the $3,300 as is not excludable under paragraph (b) of § 1.403(b)-1 is includible in A's gross income for 1965. Similarly, if, on December 31, 1968, X is an organization decribed in section 501(c)(3) and exempt from tax under section 501(a), then only so much of the $4,000 as is not excludable under paragraph (b) of § 1.403(b)-1 is includible in A's gross income for 1968.

§ 1.404(a) [Deleted]

Par. 10. Section 1.404(a) is deleted.

Par. 11. Section 1.404(a)-12 is amended to read as follows:

**§ 1.404(a)-12 Contributions of an employer under a plan that does not meet the requirements of section 401(a); application of section 404(a)(5).**

(a) *In general.* Section 404(a)(5) covers all cases for which deductions are allowable under section 404(a) (for contributions paid by an employer under a stock bonus, pension, profit sharing, or annuity plan or for any compensation paid on account of any employee under a plan deferring the receipt of such compensation) but not allowable under paragraph (1), (2), (3), (4), or (7) of such section. For the rules with respect to the taxability of an employee when rights under a nonexempt trust become substantially vested, see section 402(b) and the regulations thereunder.

(b) *Contributions made after August 1, 1969*—(1) *In general.* A deduction is allowable for a contribution paid after August 1, 1969, under section 404(a)(5) only in the taxable year of the employer in which or with which ends the taxable year of an employee in which an amount attributable to such contribution is includible in his gross income as compensation, and then only to the extent allowable under section 404(a). See § 1.404(a)-1. For example, if an employer A contributes $1,000 to the account of its employee E for its taxable (calendar) year 1977, but the amount in the account attributable to that contribution is not includible in E's gross income until his taxable (calendar) year 1980 (at which time the includible amount is $1,150), A's deduction for that contribution is $1,000 in 1980 (if allowable under section 404(a)). For purposes of this (1), a contribution is considered to be so includible where the employee or his beneficiary excludes it from his gross income under section 101(b) or subchapter N. To the extent that property of the employer is transferred in connection with such a contribution, such transfer will constitute a disposition of such property by the employer upon which gain or loss is recognized, except as provided in section 1032 and the regulations thereunder. The amount of gain or loss recognized from such disposition shall be the difference between the value of such property used to measure the deduction allowable under this section and the employer's adjusted basis in such property.

(2) *Special rule for unfunded pensions and certain death benefits.* If unfunded pensions are paid directly to former employees, such payments are includible in their gross income when paid, and accordingly, such amounts are deductible under section 404(a)(5) when paid. Similarly, if amounts are paid as a death benefit to the beneficiaries of an employee (for example, by continuing his salary for a reasonable period), and if such amounts meet the requirements of section 162 or 212, such amounts are deductible under section 404(a)(5) in any case when they are not includible under the other paragraphs of section 404(a).

(3) *Separate accounts for funded plans with more than one employee.* In the case of a funded plan under which more than one employee participates, no deduction is allowable under section 404(a)(5) for any contribution unless separate accounts are maintained for each employee. The requirement of separate accounts does not require that a separate trust be maintained for each employee. However, a separate account must be maintained for each employee to which employer contributions under the plan are allocated, along with any income earned thereon. In addition, such accounts must be sufficiently separate and independent to qualify as separate shares under section 663(c). Nothing shall preclude a trust which loses its exemption under section 501(a) from setting up such accounts and meeting the separate account requirement of section 404(a)(5) with respect to the taxable years in which such accounts are set up and maintained.

(c) *Contributions paid on or before August 1, 1969.* No deduction is allowable under section 404(a)(5) for any contribution paid on or before August 1, 1969, by an employer under a stock bonus, pension, profit-sharing, or annuity plan, or for any compensation paid on account of any employee under a plan deferring the receipt of such compensation, except in the year when paid, and then only to the extent allowable under section 404(a). See § 1.404(a)-1. If payments are made under such a plan and the amounts are not deductible under the other paragraphs of section 404(a), they are deductible under section 404(a)(5) to the extent that the rights of individual employees to, or derived from, such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid. If unfunded pensions are paid directly to former employees, their rights to such payments are nonforfeitable, and accordingly, such amounts are deductible under section 404(a)(5) when paid. Similarly, if amounts are paid as a death benefit to the beneficiaries of an employee (for example, by continuing his salary for a reasonable period), and if such amounts meet the requirements of section 162 or 212, such amounts are deductible under section 404(a)(5) in any case where they are not deductible under the other paragraphs of section 404(a). As to what constitutes nonforfeitable rights of an employee in other cases, see § 1.402(b)-1(d)(2). If an amount is accrued but not paid during the taxable year, no deduction is allowable for such amout for such year. If an amount is paid during the taxable year to a trust or under a plan and the employee's rights to such amount are forfeitable at the time the amount is paid, no deduction is allowable for such amount for any taxable year.

Par. 12. Paragraphs (a)(2) and (c)(3)(ii) of § 1.421-6 are amended to read as follows:

**§ 1.421-6 Options to which section 421 does not apply.**

(a) *Scope of section.* * * *

(2) This section is applicable to options granted on or after February 26, 1945, and before July 1, 1969 (and thereafter, to the extent that § 1.83-8(b) applies). For rules relating to options granted after June 30, 1969, see § 1.83-7. This section, however, is not applicable to—

(i) Property transferred pursuant to an option exercised before September 25, 1959, if the property is transferred subject to a restriction which has a significant effect on its value, or

(ii) Property transferred pursuant to an option granted before September 25, 1959, and exercised on or after such date, if, under the terms of the contract granting such option, the property to be transferred upon the exercise of the option is to be subject to a restriction which has a significant

effect on its value and if such property is actually transferred subject to such restriction. However, if an option granted before September 25, 1959, and on or after February 26, 1945, is sold or otherwise disposed of before exercise, the provisions of this section shall be fully applicable to such disposition.

* * * * *

(c) *Options with a readily ascertainable fair market value.* * * *

(3) * * *

(ii) The option privilege in the case of an option to buy is the opportunity to benefit during the option's exercise period from any increase in the value of property subject to the option during such period, without risking any capital. Similarly, the option privilege in the case of an option to sell is the opportunity to benefit during the exercise period from a decrease in the value of the property subject to the option. for example, if at some time during the exercise period of an option to buy, the fair market value of the property subject to the option is greater than the option's exercise price, a profit may be realized by exercising the option and immediately selling the property so acquired for its higher fair market value. Irrespective of whether any such gain may be realized immediately at the time an option is granted, the fair market value of an option includes the value of the right to benefit from any future increase in the value of the property subject to the option (relative to the option exercise period), without risking any capital. Therefore, the fair market value of an option is not merely the difference that may exist at a particular time between the option's exercise price and the value of the property subject to the option, but also includes the value of the option privilege for the remainder of the exercise period. Accordingly, for purposes of this section, in determining whether the fair market value of an option is readily ascertainable, it is necessary to consider whether the value of the entire option privilege can be measured with reasonable accuracy. In determining whether the value of the option privilege is readily ascertainable, and in determining the amount of such value when such value is readily ascertainable, it is necessary to consider—

(*a*) Whether the value of the property subject to the option can be ascertained;

(*b*) The probability of any ascertainable value of such property increasing or decreasing; and (*c*) The length of the period during which the option can be exercised.

* * * * *

§ 1.421-7 [Amended]

Par. 13. Paragraph (b)(3)(i) of § 1.421-7 is amended by adding at the end thereof the following sentence: For rules concerning options that are not statutory options, see § 1.83-7.

(This Treasury decision is issued under the authority contained in sections 83 and 7805 of the Internal Revenue Code of 1954 (83 Stat. 588; 68A Stat. 917; 26 U.S.C. 83 and 7805).)

JEROME KURTZ,
*Commissioner of Internal Revenue.*

Approved: July 11, 1978.

DONALD C. LUBICK,
*Assistant Secretary of the Treasury.*

[FR Doc. 78-20323 Filed 7-21-78; 8:45 am]

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[4810-28]

## Title 31—Money and Finance: Treasury

## CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

## PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

**Interim Regulation**

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim regulation.

SUMMARY: This rule amends §§ 51.58 and 51.67 of the revenue sharing regulations to eliminate the requirement that the Director receive a certified copy of a holding prior to initiating an administrative proceeding based on the holding. The requirement was found to be too restrictive and not required by law. The definition of a holding is also clarified by this rule.

EFFECTIVE DATE: July 21, 1978.

ADDRESSES: Consideration will be given to all written comments which are received on or before August 1, 1978. Send comments to: Director, Office of Revenue Sharing, (Symbol CC), Department of the Treasury, Washington, D.C. 20226.

FOR FURTHER INFORMATION CONTACT:

Herman Schwartz, Office of Revenue Sharing, 202-634-5182.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 10, 1976, the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) amended the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512, the Revenue Sharing Act) which established the General Revenue Sharing Program. On April 6, 1977, the Office of Revenue Sharing published interim regulations implementing the amendments to the nondiscrimination provisions of the Revenue Sharing Act (42 FR 18362). A new assurance requirement was added to § 51.58 of that subpart, entitled "Assurances required." Recipient governments are currently required to forward certified copies of holdings received against them to the Office of Revenue Sharing within 10 days of receipt of such holdings. The Director has determined that the requirement that the copy of a holding be certified is too strict and will cause unnecessary delay in receipt of holdings. Section 51.58 is therefore amended to provide that a recipient government must provide the Office of Revenue Sharing with a copy of a holding received against it within 10 days of receipt.

Section 51.67, "Procedure for effecting compliance in case of a holding," is amended to eliminate the requirement that the director receive a certified copy of a holding before notifying the chief executive officer of the noncompliance of the recipient government, and to make it clear that the Director is required to act upon a holding whenever a copy is received, from whatever source. Section 51.67 is further amended to clarify the definition of a holding.

NEED FOR IMMEDIATE GUIDANCE

Because the amendment is primarily procedural and necessary to provide immediate guidance to recipient governments, it is impractical to issue this regulation in accordance with the notice and public procedures prescribed by 5 U.S.C 553(b), or subject to the effective date limitations of 5 U.S.C. 553(d).

AUTHORITY

This amendment is issued under the authority of the State and Local Fiscal Assistance Act of 1972 as amended (Pub. L. 92-512) by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 92-488) and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 242 (Revision 1), dated May 17, 1977.

31 CFR part 51, subpart E, §§ 51.58(a) and 51.67(a) are hereby amended in the manner set forth below:

**§ 51.58 Assurances required.**

(a) *General.* In order to qualify for any payment of entitlement funds for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall, prior to the beginning of each entitlement period, execute to the satisfaction of the Director an assurance that all programs and activities of a recipient government will be conducted in

compliance with the requirements of this subpart. The chief executive officer is also required to assure that in the event a Federal or State court of Federal administrative law judge makes a holding as defined in § 51.67 of this subpart, against the recipient government, such recipient government will forward a copy of the holding to the Director within 10 days of receipt by the recipient government. Assurances required under this paragraph shall be in such form and detail as prescribed by the Director.

**§ 51.67 Holdings by a court of Federal governmental agency.**

(a) *In general.* A holding is defined as any finding of fact or conclusion of law by a Federal court, a State court, or a Federal administrative law judge, which has been litigated, pertains to a recipient government, and is to the effect that there has been exclusion, denial, or discrimination on the grounds of race, color, national origin, or sex, or a violation of any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973, or on the basis of religion as provided in the Civil Rights Act of 1964, or the Civil Rights Act of 1968. After receiving a copy of a holding from the chief executive officer or from any other source, the Director shall notify the chief executive officer of the noncompliance of the recipient government within 10 days after receiving such copy. In the case of a unit of local government, the Director shall also notify the Governor of the State in which the recipient government is located.

BERNADINE DENNING,
*Director, Office of Revenue Sharing.*

Approved:

ROGER C. ALTMAN,
*Assistant Secretary.*

[FR Doc. 78-20451 Filed 7-21-78; 8:45 am]

[1505-01]

## Title 46—Shipping

## CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

## PART 42—DOMESTIC AND FOREIGN VOAYAGES BY SEA

### CFR Correction

In § 42.13-15(g) appearing on page 29 of title 46 (parts 41-69) revised as of October 1, 1977, the figure "35 percent" in the next to the last line should have "85 percent". As corrected § 42.13-15(g) reads as follows:

(g) *Block coefficient.* The block coefficient ($C_b$) is given by

$$C_b = \Delta / L.B.d_1$$

where $\Delta$ is the volume of the molded displacement of the vessel, excluding bossing, in a vessel with a metal shell, and is the volume of displacement to the outer surface of the hull in a vessel with a shell of any other material, both taken at a molded draft of $d_1$; and $d_1$ is 85 percent of the least molded depth.

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[4310-55]

## Title 50—Wildlife and Fisheries

## CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

## PART 32—HUNTING

### Opening of Waubay National Wildlife Refuge, South Dakota, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Waubay National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Gun—November 25, 1978, through December 3, 1978. Archery—December 4, 1978, through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert R. Johnson, Waubay National Wildlife Refuge, Waubay, S. Dak. 57273, phone 605-947-4695.

SUPPLEMENTARY INFORMATION:

**§ 32.32 Special regulations; big game; for individual wildlife refuge areas.**

Hunting is permitted on the Waubay National Wildlife Refuge, South Dakota, only on the areas designated by signs as being open to hunting. This area, comprising 4,591 acres, is elineated on maps available at the refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, 439 Federal Building, P.O. Box 250, Pierre, S. Dak. 57501. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. No hunting within the 60-acre safety zone surrounding refuge headquarters.
2. All refuge roads and trails within the open hunting area, other than public roads, will be closed to vehicles. All gates and trails, however, will be open to foot traffic.
3. Campfires are prohibited.
4. All deer taken on the area must be checked in at refuge checking station located at the old CCC camp site.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 7, 1978.

ROBERT R. JOHNSON,
*Refuge Manager.*

[FR Doc. 78-20251 Filed 7-21-78; 8:45 am]

# proposed rules

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

[3128-01]

## DEPARTMENT OF ENERGY

[10 CFR Part 473]

### AUTOMOTIVE PROPULSION RESEARCH AND DEVELOPMENT

**Proposed Regulations for Review and Certifications of Grants, Cooperative Agreements, Contracts, and Projects**

AGENCY: Department of Energy.

ACTION: Notice of proposed regulations.

SUMMARY: The Department of Energy hereby issues a notice of proposed administrative regulations to implement section 304(f) of the Department of Energy Act of 1978-Civilian Applications. This new Act confers authority on the Secretary of Energy to expend Federal funds in order to accelerate the development of certain advanced automobile propulsion system alternatives to the existing internal combustion engine. Today's notice proposes regulations prescribing procedures, standards, and criteria for review and certification of new grants, contracts, cooperative agreements, Department of Energy projects, or other agency projects to be funded under the Act with the object of insuring that they supplement rather than supplant, duplicate, displace, or lessen research and development activities in the private sector.

DATES: Comments must be received by August 25, 1978. Requests to speak: By 9:30 a.m., e.d.t., August 14, 1978. Hearing statements: By 4:30 p.m., e.d.t., August 24, 1978. Hearing date: 9:30 a.m., e.d.t., August 25, 1978.

ADDRESSES: Comments and requests to speak at the hearing to: Public Hearing Management, Room 2313, Box SZ, Department of Energy, 2000 M Street NW., Washington, D.C. 20461.

Hearing location: Department of Energy, Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

George M. Thur, Office of Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-4675.

Neal J. Strauss, Office of the General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9380.

Robert C. Gillette (Hearing Procedures), Director, Regulations Management, Department of Energy, 2000 M Street NW., Room 22148, Washington, D.C. 20461, 202-254-5201.

James Merna (Office of Public Affairs), Department of Energy, Room 3104, Washington, D.C. 20461, 202-566-9833.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. General
B. Background
C. Important Statutory Provisions
II. Development of Proposed Regulations
III. Discussion of Proposed Regulations
A. General Operation of Proposed Program
B. Specific Provisions of Proposed Regulations
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IV. Environmental Considerations
V. Federal Grant and Cooperative Agreement Act of 1977
VI. Comment and Public Hearing Procedures
A. Written Comments
B. Request Procedures
C. Conduct of Hearings

## I. Introduction

### A. General

The Department of Energy ("DOE") today gives notice of proposed regulations setting forth procedures, standards, and criteria for review and certification of new grants, contracts, cooperative agreements, DOE projects, and other agency projects required to be promulgated under section 304(f) of the Department of Energy Act of 1978—Civilian Applications ("Act"). 15 U.S.C. 2703(f)(1970). The objective of this review and certification program is to insure that Federal funds to be expended under the Act do not support efforts at research and development of advanced automobile propulsion system alternatives to the existing internal combustion engine that supplant, duplicate, displace, or lessen the same efforts occurring or that have occurred in the private sector. These regulations, when finalized, will apply to any research and development grants, cooperative agreements, contracts, and projects to be funded under the Act, including those conducted by employees of Federal agencies.

The major elements of the program are—

1. Requirements for Applicants for a Grant, Cooperative Agreement, or Contract to Submit Information;
2. Public Notice and Opportunity for Objection;
3. Initial Review by Manager;
4. Review by Interagency Review Panel;
5. Final Action and Certification by Manager; and
6. Standards and Criteria.

### B. Background

The Energy Research and Development Administration (ERDA) has responsibility for automotive research, development, and demonstration under the Energy Reorganization Act of 1974, 42 U.S.C. 5801, et seq., and the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901, et seq.). The Congress transferred that responsibility to the DOE in the Department of Energy Organization Act of 1977, effective October 1, 1977 (42 U.S.C. 7101, et seq.).

The new Act reemphasizes Congressional commitment to promote accelerated development of advanced automotive alternatives to the existing internal combustion engine, and authorizes additional funds to be appropriated for that purpose. It is not intended to fund production prototypes or other steps involving technology transfer to mass production, which are reserved for the private sector.

The advanced automotive propulsion program is not to be confused with ongoing research and development efforts to produce electric cars. Those efforts are governed by a separate statute, namely, the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, as amended. 15 U.S.C. 2501, et seq. By way of contrast, the advanced automotive program thus far has focused on research and development of advanced heat engines, such as the gas turbine engine and the Stirling engine.

### C. Important Statutory Provisions

The statutory provisions governing the requirements and applicability of the review and certification program are the six subsections of section

304(f) and some provisions of section 306, respectively.

Subsection (f)(1) of section 304 sets forth the substantive policies to be followed by the DOE in the exercise of its overall management responsibility for carrying out the program. The subsection requires the DOE to conduct the program so as to supplement private industry research and development efforts, and to avoid supplanting, displacing, lessening, or duplicating those efforts.

Subsection (f)(2) requires the DOE to issue the administrative regulations, which are published in proposed form today. Procedures, standards, criteria, and certification requirements are the specified content of the regulations. The subsection calls for discussion in the certification of related or comparable industry research and development considered, as well as related issues such as cost sharing and patent rights. Subsection (f)(3) requires that certificates be available for the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources. In addition, the subsection makes certificates subject to public disclosure under the Freedom of Information Act and the Federal Nonnuclear Energy Research and Development Act of 1974, as amended. However, the subsection does not permit judicial review of any certifications and otherwise exempts them from coverage by the Administrative Procedure Act.

Subsections (f)(4) and (f)(5) require a discussion similar to that contained in the certificate in annual reports and budget submissions under the Act, respectively.

Subsection (f)(6) limits the scope of section 304(f) to new contracts, grants, cooperative agreements, and projects. Excluded from coverage are contracts, grants, cooperative agreements, or projects formally initiated prior to enactment, as well as any renewal or extension thereof.

By its terms, section 304(f) of the Act applies to any new contracts, grants, cooperative agreements, DOE projects, or other agency projects funded or to be funded under the Act. Section 306 authorizes such activities by agencies in addition to the DOE, subject however to management by the DOE. Special emphasis is placed on the Department of Transportation ("DOT"). The DOE is supposed to use the expertise of the DOT to the extent the DOE deems appropriate. Moreover, when the DOE does utilize the assistance of the DOT, the DOT is authorized, under DOE management, to enter into contracts, grants, cooperative agencies on a reimbursable basis or otherwise. Section 306 also authorizes the DOE to call upon the expert assistance of other Federal agencies. In the past, the DOE has conducted automobile propulsion research with the assistance of the National Aeronautics and Space Administration ("NASA"), and in section 311 of the Act, the Congress indicated its approval of the DOE-NASA collaboration by amending section 102 of the National Aeronautics and Space Act of 1958 to promote continutation of this relationship. 42 U.S.C. 2451 (1970). The DOE expects to continue its relationship with NASA and to transfer some funds by interagency agreement to it for research and development under the Act.

Parenthetically, it is noteworthy that section 306 requires consultation by the DOE with the DOT and the Environmental Protection Agency ("EPA"), as well as other appropriate persons and organizations outside the Federal Government. The section also authorizes establishment of such advisory panels as the DOE deems appropriate to review and make recommendations with regard to applications for funding under the Act.

## II. Development of Proposed Regulations

Section 304(f) provided for the DOE to issue implementing regulations 60 days from the date of enactment, which was February 25, 1978. Within the limits of the time necessary to issue a notice of proposed regulations as fast as reasonably possible, the DOE has sought to canvass and evaluate as much relevant information as it could identify. The DOE has research the legislative history of the Act and surveyed the relevant sources of data about automotive propulsion research and development, as well as available forums for information exchange with the industry. DOE procurement experts have been consulted, and an analysis has been done of assistance and procurement regulations, manuals, and procedures since the regulations will have to fit within the context of these general requirements.

In addition, the DOE has discussed the proposed regulations with or circulated drafts of today's notice to the DOT, the EPA, NASA, and the Department of Justice.

## III. Discussion of Proposed Administratve Regulations

### A. General Operation of Proposed Program

Research and development projects can be carried out under a variety of arrangements, and although not all of these arrangements may be used, the regulations proposed today are designed to anticipate all the possibilities. The possible arrangements are research and development—

1. By DOE employees (DOE project);

2. By employees of other Federal agencies (agency project);

3. Under an unsolicited or solicited contract, grant, or cooperative agreement entered into by the DOE or the DOT with a private organization, or non-Federal public agency; and

4. Under an unsolicited or solicited contract, grant, cooperative agreement entered into by a Federal agency, other than the DOE or the DOT, such as NASA, with a person, private organization, or non-Federal public agency pursuant to an interagency agreement with the DOE or the DOT.

In some instances, Federal national laboratories, including those under the DOE, may perform research and development projects. Those projects would either be DOE or agency projects depending on which Federal agency operates the laboratory.

The major common features of the proposed regulations for all of these arrangements under the proposed regulations are—

1. Public notice in the Commerce Business Daily with opportunity for interested persons to file a statement of objection;

2. Standards and criteria to prevent duplication, displacement, or lessening of private industry research and development;

3. Initial screening by the manager (the agency official who issues the certification);

4. Review and recommendations by an interagency review panel; and

5. Final action and certification of approved projects by the manager.

In the event that a manager is dealing with a prospective contract, grant, or cooperative agreement, the proposed regulations call for completion of the review process prior to actual negotiation of the agreement. The certification document will be prepared by the manager in advance of such a negotiation and formally signed by him at or about the same time as the agreement. In this way, no applicant for a contract, grant, or cooperative agreement will have to negotiate with uncertainty as to the outcome of the review process under final version of today's proposed regulations.

The DOE emphasizes that the procedures and requirements proposed today are in addition to rather than in substitution for the general contract, grant, and cooperative agreement procedures and requirements. 10 CFR Chapter 10, 41 CFR Chapter 9. Those general rules have been or will be proposed in the Federal Register. Both sets of obligations apply.

B. SPECIFIC PROVISIONS OF PROPOSED REGULATIONS

1. *Public Notice.* Under § 473.20, today's proposal provides in substance that no grant, cooperative agreement, contract, DOE project, or agency project will be certified without prior notice and opportunity for the public to object. The principal purpose of this provision is to create a method by which relevant information from interested persons, which may not have been available before, can be gathered. The DOE assumes that members of the public having relevant information have an incentive to object to research and development forbidden under the standards and criteria generally set forth in the Act and embodied in proposed § 473.30. The DOE believes that a public notice will activate that incentive and encourage members of the public to provide relevant information that might otherwise not be forthcoming for one reason or another.

The Commerce Business Daily has been chosen tentatively as the vehicle for publishing notice under today's proposal because it is generally available to the segments of the public knowledgeable in automotive research and development and is the publication by which the United States makes the public aware of Federal procurement actions. The Commerce Business Daily is published by the U.S. Department of Commerce, and is available from Administrative Office, Field Service, U.S. Department of Commerce, Commerce Business Daily, 433 Van Buren Street, Room 1304, Chicago, Ill. 60607, and many public libraries. Consideration was given to publication in the FEDERAL REGISTER, but the DOE decided not to propose publishing the notice in that publication because it would not be as likely as the Commerce Business Daily to reach persons with relevant information.

The proposed regulations would call for objections to be in writing and to incorporate supporting information. While bare, summary objections will be considered, lack of supporting information may make such an objection appear unpersuasive.

The DOE is not proposing that a hearing be held prior to certification to explore objections. The act exempts this program from hearing requirements of the Administrative Procedure Act, and the DOE does not see any substantial benefit resulting from a hearing that would justify the costs associated with the time consumed by such a proceeding. More generally, the DOE also thinks that informality in procedure will be conducive to expeditious decisions, and expedition is essential given the objective of the act to accelerate development of advanced automobile propulsion systems.

2. *Standards and Criteria.* The standards and criteria in § 473.30 are the basis for determining whether a grant, contract, cooperative agreement, or project is certifiable under the act. As noted above, they are in addition to other governing general standards such as technical merit, program relevance, and procurement and grant procedural requirements.

The proposed § 473.30 states six related standards and criteria in general terms. If finalized, these standards and criteria would permit certification only upon findings that the research and development to be performed—

1. Supplements private research and development;

2. Is not duplicative of previously abandoned research and development without good cause;

3. Would not be performed during the Federal fiscal year but for Federal funding;

4. Results in an accelerated target date for commercialization;

5. Is not duplicative of successful past and current private research and development; and

6. Does not constitute a Federal subsidy of existing efforts rather than of accelerated efforts by an applicant for a grant, contract, or cooperative agreement.

The above-described standards and criteria are based on the language of the act and its legislative history. The House report on H.R. 13655 was of particular help in drafting the regulatory provisions.

These standards and criteria will be applied on a case-by-case basis and are expected to take on further meaning as experience in applying them progresses. They have been stated in general terms in order to provide for future cases whose precise circumstances cannot be presently anticipated.

3. *Initial Review by Manager.* The proposed regulations define the term "manager" to mean the program official who requests a grant agreement, contract, or cooperative agreement to be negotiated, or who authorizes a DOE or other agency project to begin. DOE and agency projects are conducted only by full-time Federal employees. In some instances, the manager will be an employee of the DOE; in others, an employee of another agency such as the DOT or NASA. The manager should not be the employee responsible for formal negotiation of a grant, contract, or cooperative agreement.

Under the proposed regulations, the manager would be responsible for initial review of prospective grants, contracts, cooperative agreements, and projects to determine whether the research and development to be performed is inconsistent with the standards and criteria discussed above. A negative determination would end the review process. In such an event, the manager would have to notify any interested person who objected in response to a Commerce Business Daily notice and, in the case of an unsolicited grant, cooperative agreement, or contract, a copy would also be sent to the applicant for Federal funding. The notification would have to contain a brief statement of supporting reasons.

Initial review occurs after the 30-day period for filing objections has expired. That point in time is different depending upon the arrangement under which the proposed research and development is to take place. For unsolicited grant, cooperative agreement, and contract proposals, the manager will be reacting to a proposal and any objections to it from outside the Federal Government. For prospective solicited grants and contracts, the manager will be reviewing the solicitation and possible public objections to it prior to its release and receipt of responsive proposals. For DOE or agency projects, the manager will be looking at a project plan and any objections filed by the public prior to authorizing funds to be spent on its execution.

4. *Interagency Review Panel.* A manager who believes that the proposed research and development to be performed is consistent with the standards and criteria of § 473.30 is then obligated to cause the convening of an Interagency Review Panel ("panel") to review and make recommendations as to whether that research and development is certifiable. The manager is supposed to present to the panel all the pertinent information gathered.

The panel, as proposed today, will consist of agency designees whose identities may vary from case to case; there will not be permanent members. The head of the panel will be a designee of the agency employing the manager. DOE will always be represented on the panel. The agency employing the manager will determine the identity of the other agencies to be represented depending on which agencies have expertise to contribute. It is expected that the DOT, the EPA, and NASA will normally be represented.

The panel will make its recommendations in writing, with a supporting statement of findings, to the manager. The proposed regulations provide that the panel will operate by majority rule with the chairman casting the decisive vote in the case of a deadlock.

5. *Final Action and Certification.* After receiving the recommendations of the panel, the manager makes a decision on the question of whether to certify. If the manager is not an employee of the DOE, the proposed regu-

lations would require DOE concurrence in the decision. DOE concurrence is to be required because of DOE's overall management responsibility. Negative decisions are to be communicated in writing to interested persons who objected and, in the case of grants, cooperative agreements, or contracts, to applicants. Affirmative decisions will lead to preparation of a certification of the grant, cooperative agreement, contract, or project, with distribution of copies to interested persons and any applicant, as appropriate.

Reflecting the demands of section 304(f) of the Act, the proposed regulations would require the manager to include in the certification a discussion of the grant, contract, cooperative agreement, or project research and development to be performed, showing compliance with the applicable standards and criteria and comparable private research and development. Also reflecting statutory demands, the proposed regulations would have the certification deal with cost sharing and patent rights, where relevant, in the case of grants or contracts.

The proposed regulations also contain a section describing the extent to which certifications are subject to review or disclosure. The provisions of that section are drawn from the statute and are included for the convenience of readers of the Code of Federal Regulations.

### C. INFORMATION TO BE CONSIDERED IN REVIEW AND CERTIFICATION DECISIONS

Decisions under this program will be made on the basis of information derived from various sources. The DOE has reviewed the nature of available informational resources and has concluded that the sources are—(1) other Federal agencies in possession of pertinent technical data; (2) current DOE projects with industry; (3) international symposia; (4) professional and manufacturing organizations such as the Society of Automotive Engines (SAE), the American Society of Mechanical Engineers (ASME), and the Motor Vehicle Manufacturers Association (MVMA); and (5) semiannual Contractor Coordination Meetings for DOE staff and contractors in Detroit, Mich.

As a means of eliciting more information and to make that information more accessible to the public, DOE intends to give public notice of contractor coordination meetings in the FEDERAL REGISTER and to invite public attendance. Members of the public who respond will upon request be included on a mailing list for announcements of such meetings, press releases, annual reports, and other material pertaining to advanced automobile propulsion systems.

In consulting with other agencies participating in this program and who may name a representative for the Panel, the DOE will exchange and gather pertinent information regarding ongoing and projected research and development efforts in the automotive propulsion field.

Apart from these general resources, which will bring about informed decisionmaking under the review and certification system proposed today, the proposed regulations call for additional information or justification from applicants for grants, cooperative agreements, or contracts. This additional material will enable managers and Panel members to focus on the impact a grant, cooperative agreement, or contract would have upon the research and development program of the applicant in light of the standards and criteria of § 473.30. The requirements for this additional material are set forth in § 473.10 of the proposed regulations and, in responding to them, the applicant will provide information necessary to apply the standards and criteria.

In some instances, § 473.10 asks questions calling for simple answers such as—

1. Whether the research and development will initiate or continue a research and development program; and

2. What is the expected delay in beginning mass production that would occur but for the grant, cooperative agreement, or contracts. In other instances, complex responses may be anticipated. For example, the proposed § 473.10 would have applicants—

1. Discuss allegedly comparable industrial research and development; and

2. Justify further research and development of abandoned systems.

In casting the provisions of section 473.10, DOE has sought to minimize the burden of responding consistent with its obligations to carry out the law. Under that section, an applicant would have to provide a written assurance to the DOE, under certification, that the grant, cooperative agreement, or contract funds would represent a real year-to-year increase in the expenditure of the applicant's resources. DOE has not asked for submission of detailed budget figures because it believes that the possiblity of an investigation, the possible consequences of discovery, and the demand for a certified assurance by a responsible person in the proposed § 473.11(c) is enough to warrant belief in the veracity of such an assurance. The DOE also wishes to minimize the burden and cost of applying for a grant, cooperative agreement, or contract.

Applicants or other persons submitting information should bear in mind that the DOE is subject to the disclosure requirements of the Freedom of Information Act and the Federal Nonnuclear Energy Research and Development Act of 1974.

D. *Advisory Panel.* One problem tentatively resolved in today's proposal deserves special emphasis in this preamble in order to focus an important DOE choice for public comment. Both the act and the legislative history indicate that the Congress expected the DOE to develop some kind of advisory panel to function as an integral part of the decisionmaking apparatus in the review and certification program proposed today. The DOE believes the Interagency Review Panel provided for by the proposed regulations substantially complies with the legislative expectation. As indicated above, the Panel would be composed of full-time employees of Federal agencies.

The DOE did consider chartering an advisory committee under the Federal Advisory Committee Act. Such a committee would have to have had a balanced membership, including representatives of industry.

The DOE elected not to propose chartering such a committee for the purpose of implementing section 304(f) of the act principally because of the conflicts of interest that industry representatives might have in occupying influential positions in the decisionmaking process. DOE has been particularly concerned about instances where the principals of these representatives would be applicants, complainants, or have competitive interests at stake.

The public is invited to comment on the advisability of this choice and the details in the proposed regulations governing the operation of the Panel.

E. *Probable Impacts on the Economy, Public, and Industry.* These regulations, when finalized, are likely to have only minimal impact on the public or industry. This is so partly because the Act and regulations specify that the renewal of existing grants, cooperative agreements, contracts, or projects is not subject to the review and certification program. Moreover, even as new grants, cooperative agreements, contracts, and projects come under the regulations, the impacts on the public and industry are not expected to be significant. The costs of compliance to the public directly will be comparatively small and limited to the costs of providing information either in an application for a grant, cooperative agreement, or contract or by way of objection in response to a public notice in the Commerce Business Daily.

The chief effects of these regulations will be the minor delay involved in processing and occasional savings on research and development that might otherwise have been funded.

While these effects should not be regarded as insubstantial, they do not represent an impact that is truly significant or major in terms of gross economic and social effects or of promoting achievement of national energy conservation goals.

For the foregoing reasons and because of the short statutory deadline for promulgation under section 304(f), a comment period of only 30 days is provided on these regulations. A public hearing has been scheduled within this period.

## IV. Environmental Considerations

### A. Role of EPA

Section 307 of the Act requires EPA to conduct tests on advanced automobile propulsion systems developed with Federal financial assistance under the Act to determine whether there is compliance with environmental standards promulgated and enforced by EPA.

### B. National Environmental Policy Act of 1969

The DOE has concluded that the National Environmental Policy Act of 1969 does not require preparation of an environmental assessment or of an environmental impact statement to accompany these regulations. 42 U.S.C. 4331, et seq. (1970). The rationale for that conclusion is that the regulations are largely procedural in nature and their issuance will not result in a predictable significant environmental impact. The DOE, however, is committed to insuring that individual contracts, cooperative agreements, grants, or projects executed by the DOE will comply with applicable requirements of NEPA.

## V. Federal Grant and Cooperative Agreement Act of 1977

On February 3, 1978, the Federal Grant and Cooperative Agreement Act of 1977 became law. 41 U.S.C. 501-509 (1970). That statute mandates certain distinctions among grants, cooperative agreements, and contracts. It also requires that the appropriate assistance instrument be used in programs of Federal assistance notwithstanding any other provision of law authorizing use of one or more of those instruments. The Director of the Office of Management and Budget ("OMB") is authorized to issue supplementary interpretative guidelines under the Federal Grant and Cooperative Act of 1977. OMB proposed guidelines on May 19, 1978, and anticipated issuing final guidelines during the summer of 1978. 43 FR, 21832 (May 19, 1978).

The proposed regulations refer to cooperative agreements because the DOE anticipates that there may be instances when the Federal Grant and Cooperative Agreement Act will mandate their use notwithstanding the lack of reference to such agreements in the Act.

## VI. Public Hearing and Written Comment Procedures

### A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, standards, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Automotive Propulsion R&D—Proposed Rule." Fifteen copies should be submitted. All comments received by August 25, 1978, before 4:30 p.m., e.d.t., and all other relevant information will be considered by DOE before final action it taken on the proposed regulations.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

### B. Request Procedures

The time and place of this public hearing are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble and must be received before 4:30 p.m. e.d.t. on August 14, 1978. Such a request may be hand delivered to such address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Automotive Propulsion R&D—Proposed Rule."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted through the day before the hearing.

DOE will notify, before 4:30 p.m. e.d.t., August 23, 1978, each person selected to appear at the hearing. Each person selected to be heard must submit 50 copies of her or his statement on August 24, 1978, to the address given in the addresses section of this preamble.

### C. Conduct of Hearings

DOE reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m. e.d.t., August 14, 1978. DOE will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In considertion of the foregoing, the DOE hereby proposes to amend chapter II of title 10, Code of Federal Regulations, by establishing part 473 as set forth below.

Issued in Washington, D.C., July 19, 1978.

WILLIAM P. DAVIS,
*Deputy Director of Administration.*

## PART 473—AUTOMOTIVE PROPULSION RESEARCH AND DEVELOPMENT; REVIEW AND CERTIFICATION OF GRANTS, COOPERATIVE AGREEMENTS, CONTRACTS, AND PROJECTS

Sec.
473.1 Purpose and scope.
473.2 Definitions.
473.10 Required information from applicant.
473.11 Submission of applicant's information.
473.12-473.19 [Reserved].
473.20 Public notice and opportunity to object.
473.21 Supplemental information and rebuttal.
473.22 Initial review by manager.
473.23 Interagency review panel.
473.24 Final action and certification by manager.
473.25 Reviewability of certifications.
473.26-473.29 [Reserved].
473.30 Standards and criteria.

AUTHORITY: Sec. 304(f), Automotive Propulsion Research and Development Act of 1978, 15 U.S.C. 2703(f)(1970), and section 644, Department of Energy Organization Act of 1977, 42 U.S.C. 7254 (1970).

### § 473.1 Purpose and scope.

These regulations implement section 304(f) of the Department of Energy Act of 1978—Civilian Applications, and apply to each new contract, grant, cooperative agreement, Department of Energy project, or other Agency project funded or to be funded under the authority of that Act. 15 U.S.C. 2703(f) (1970). These regulations do not apply to subcontracts, or to contracts, grants, cooperative agreements, Department of Energy projects, or other Agency projects entered into, made, or formally approved and initiated prior to February 25, 1978, or with respect to any renewal or extension thereof. Insofar as grants, cooperative agreements, and contracts are concerned, these regulations provide procedures and requirements that are in addition to those generally applicable under the DOE assistance regulations of 10 CFR chapter 10 and the DOE procurement regulations of 41 CFR chapter 9.

### § 473.2 Definitions.

For purposes of these regulations—

"Act" means the Department of Energy Act of 1978—Civilian Applications.

"Advanced automobile propulsion system" means an energy conversion system, including engine and drivetrain, which utilizes advanced technology and is suitable for use in an advanced automobile.

"Agency project" means research and development under the Act by employees of a Federal agency furnishing assistance at the request of the DOE.

"Annual funding period" means the Federal fiscal year during which a grant, cooperative agreement, or contract is funded by an appropriation under the Act.

"Applicant" means any private laboratory, university, nonprofit organization, industrial organization, private agency, instutition, organization, corporation, partnership, individual, or public agency other than a Federal agency.

"DOE" means the Department of Energy.

"DOE project" means research and development under the Act by employees of the DOE.

"Federal agency" mean an Executive agency as defined by 5 U.S.C. 105 (1970).

"Manager" means the Federal program official who requests grant agreements, cooperative aggrements, or contracts to be negotiated or who authorizes a DOE or Agency project to begin.

"Notice of availability" means a notice published in the Commerce Business Daily advertising the availability of a formal solicitation document to be issued for the purpose of inviting and setting guidelines for submission of proposals for research and development grants, cooperative agreements, or contracts.

"Solicitation" means a formal, written request for proposals to perform research and development under grant, cooperative agreement, or contract, typically including evaluation criteria and a statement of the work to be done.

### § 473.10 Required information from applicant.

In accordance with applicable procedures of § 473.11, any applicant for grant, cooperative agreement, or contract under the Act to support research and development activities of an advanced automobile propulsion system shall—

(a) State whether the activities will initiate or continue research and development of an advanced automobile propulsion system;

(b) State, insofar as the applicant has information, whether and to what extent the activities to be supported are technically the same as activities conducted previously or to be conducted during the annual funding period by any person for research and development of a substantially similar advanced automobile propulsion system;

(c) Justify research and development activities on an advanced automobile propulsion system abandoned by any person because of a lack of mass production poetential by presenting information showing a significant intervening technological advance, promising conceptual innovation, or other special consideration;

(d) Provide—

(1) An assurance that the amount of funds to be expended for research and development of advanced automobile propulsion systems during the annual funding period will exceed the amount of funds expended, if any, during the previous year for the same purpose by at least the amount of the grant, cooperative agreement, or contract being sought; or

(2) Information showing that any decrease in expenditures for the purpose of research and development of advanced automobile propulsion systems is not a lessening of efforts for that purpose; and

(e) Provide to the extent possible—

(1) The target date for beginning mass production of the advanced automobile propulsion being developed;

(2) The estimated delay, if any, which is likely to occur if the application for a grant, cooperative agreement, or contract is denied; and

(3) An assurance that the target date is unlikely to be reached unless the applicant receives a grant, cooperative agreement, or contract.

### § 473.11 Submission of applicant's information.

(a) An applicant submitting an unsolicited proposal to conduct research and development to be funded by a grant, cooperative agreement, or contract under the Act shall include the information required under § 473.10 in the proposal required by the "Guide for the Submission of Research Proposals from Educational Institutions" or the "Guide for Submission of Research and Development Proposals by Individuals and Organizations," as applicable.

(b) In responding to a solicitation for a proposal to conduct research and development funded by a grant, cooperative agreement, or contract under the Act, the applicant shall include the information required under § 473.10 in the proposal.

(c) Information submitted under § 473.10 of these regulations shall be certified in writing as complete and accurate by the applicant, and if the applicant is not an individual, the chief executive officer of the applicant or his authorized designee shall sign the certification.

### §§ 473.12–473.19 Reserved.

### § 473.20 Public notice and opportunity to object.

(a) In compliance with paragraph (b) of this section and unless provisions of paragraph (c) of this section apply, the manager shall cause to be published in the Commerce Business

Daily a statement describing the unsolicited proposal, solicitation, DOE project, or agency project, as appropriate, inviting any interested person to submit a written objection, with supporting information at an appropriate address on or before 30 days from the date of publication, if the person believes that the research and development to be performed does not comply with standards and criteria of § 473.30.

(b) Except as paragraph (c) of this section applies, the manager shall comply with the requirements of paragraph (a) of this section—

(1) Upon receipt of an unsolicited proposal from an applicant:

(2) In any notice of availability of a solicitation;

(3) Prior to beginning a DOE project; or

(4) Prior to beginning an agency project.

(c) Without publishing a notice under paragraph (a) of this section, the manager may reject an unsolicited proposal that does not comply with these regulations or any other generally applicable requirements.

**§ 473.21 Supplemental information and rebutal.**

The manager may request additional information from an applicant or any interested person who files an objection under § 473.20.

**§ 473.22 Initial review by manager.**

(a) Upon expiration of the time for filing information under these regulations, the manager shall—

(1) Review the proposed research and development to be performed under grant, under cooperative agreement, under contract, as a DOE project, or as an agency project and any other pertinent information received under these regulations or otherwise available; and

(2) Initially determine whether the research and development reviewed under paragraph (a)(1) of this section complies with the standards and criteria of § 473.30.

(b) A manager who makes a negative determination under paragraph (a)(2) of this section shall inform the applicant in the case of an unsolicited proposal any interested person who objected of the decision in writing with a brief statement of supporting reasons.

(c) A manager who initially determines that research and development reviewed under this section complies with the standards and criteria of § 473.30 shall cause an Interagency Review Panel to be convened under § 473.23.

**§ 473.23 Interagency Review Panel.**

(a) The Interagency Review Panel shall consist of—

(1) A head designated by the Federal agency that employs the manager;

(2) A representative of the DOE if the manager is not an employee of the DOE; and

(3) A representative of any other Federal agency deemed appropriate by the Federal agency that employs the manager.

(b) The Interagency Review Panel shall—

(1) Review the research and development to be performed and consider the information presented by the applicant, in the case of a grant, cooperative agreement, or contract, and by any interested person who filed a statement of objection;

(2) Make a recommendation with a supporting statement of findings to the manager as to whether the research and development to be performed complies with the standards and criteria of § 473.30; and

(3) Operate by majority vote with the head of the Panel casting the decisive vote in the event of a tie.

**§ 473.24 Final action and certification by manager.**

(a) Upon consideration of the recommendation of the Interagency Review Panel and other pertinent information, the manager—

(1) Shall determine whether the research and development to be performed complies with the standards and criteria of § 473.30;

(2) Shall obtain the concurrence of the DOE if the manager is not an employee of the DOE;

(3) Shall, in the event of a negative determination under this section, advise the applicant, in the case of a grant, cooperative agreement, or contract, and any interested person who filed a statement of objection; and

(4) Shall, in the event of an affirmative determination under this section, prepare a certification—

(i) Explaining the determination;

(ii) Discussing any allegedly related or comparable industrial research and development considered and deemed to be an inadequate basis for not certifying the grant or contract;

(iii) Discussing issues regarding cost sharing and patent rights related to the standards and criteria of § 473.30 of these regulations; and

(iv) Discussing any other relevant issue.

(b) After complying with paragraph (a) of this section, the manager shall sign the certification and distribute copies to the applicant, if any, and any interested person who filed a statement of objections—

(1) Immediately in the case of a DOE or agency project, and

(2) After the agreement has been negotiated in the case of a grant or contract.

**§ 473.25 Reviewability of certifications.**

Any certification issued under these rules is—

(a) Subject to disclosure under 5 U.S.C. 552 (1970) and sec. 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, 42 U.S.C. 5918 (1970);

(b) Subject neither to judicial review nor to the provisions of 5 U.S.C. 551-559 (1970), except as provided under paragraph (a) of this section; and

(c) Available to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

**§§ 473.26–473.29 [Reserved]**

**§ 473.30 Standards and criteria.**

Research and development to be performed under a grant, under a cooperative agreement, under a contract, as a DOE project, or as an agency project under the act may be certified under these regulations only if the research and development to be conducted—

(a) Supplements the automotive propulsion system research and development efforts of industry;

(b) Is not duplicative of efforts previously abandoned by private researchers unless there has been an intervening technological advance, promising conceptual innovation, or justified by other special consideration;

(c) Would not be performed during the annual funding period but for the availability of the Federal funding being sought;

(d) Results in an earlier, realistic target date for mass production consistent with appropriate research and development techniques than would otherwise be chosen;

(e) Is not technologically the same as efforts by any person conducted previously or to be conducted during the annual funding period regarding a substantially similar advanced automobile propulsion system; and

(f) Does not enable the applicant to diminish the level of private resources expended on advanced automotive research and development by substituting Federal funds without justification.

[FR Doc. 78-20450 Filed 7-21-78; 8:45 am]

[6210-01]

## FEDERAL RESERVE SYSTEM

[12 CFR Part 225]

[Docket No. R-0171; Regulation Y]

### BANK HOLDING COMPANIES AND BARNETT BANKS OF FLORIDA, INC.

#### Check Verification Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and action on individual application:

SUMMARY: The Board proposes to adopt a regulation that would permit bank holding companies to engage in providing check verification services, subject to particular procedures in individual cases. The Board will also consider acting by order, prior to action on the proposed rule, on the application of Barnett Banks of Florida, Inc., to provide check verification services through a newly formed subsidiary, Verifications, Inc.

DATE: Comments must be received on or before August 14, 1978.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the docket number R-0171.

FOR FURTHER INFORMATION CONTACT:

Julius L. Loeser, Senior Attorney, 202-452-3236, or J. Harry Jorgenson, Attorney, 202-452-3778, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board of Governors has received an application filed by Barnett Banks of Florida, Inc., Jacksonville, Fla. ("Applicant"), 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 prior approval to engage de novo through a subsidiary to be known as Verifications, Inc., in providing check verification services to merchants.

Applicant proposed to engage in providing check verification services as follows:

> In consideration of fees paid by a subscribing merchant, Verifications, Inc., will authorize acceptance by the merchant of certain personal checks tendered by the merchant's customers in payment of goods and services. In the event a validly authorized check is subsequently dishonored, Verifications, Inc. will purchase such check from the merchant.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, acquire "shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." Applicant believes that the proposed activity is so closely related to banking as to be a proper incident thereto and the Board believes that a reasonable basis exists for Applicant's opinion.

In connection with this application, the Board will consider amending regulation Y (12 CFR § 225.4(a)) to add the activity of providing check verification services to the list of activities that the Board has previously determined to be permissible for bank holding companies. Interested persons may express their views on the question whether providing check verification services is "so closely related to banking or managing or controlling banks as to be a proper incident thereto" within the meaning of section 4(c)(8).

The Board will also consider acting by order, prior to action on the proposed rule, on the application of Barnett Banks of Florida, Inc., to provide check verification services through a newly formed subsidiary, Verifications, Inc. Interested persons may also express their views on the question whether consummation of the proposal by Applicant 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 requests for a hearing on these questions 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 of Barnett Banks of Florida, Inc., may be inspected at the offices of either the Board of Governors or the Federal Reserve Bank of Atlanta. Expressions of views received by the Board may be inspected at the offices of the Board of Governors.

Any views or requests for hearing either on the proposed rule or on the individual application 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 August 14, 1978.

Board of Governors of the Federal Reserve System, July 12, 1978.

THEODORE E. ALLISON,
*Secretary of the Board.*

[FR Doc. 78-20447 Filed 7-21-78; 8:45 am]

[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[14 CFR Part 11]

[Docket No. 18142; Notice No. 78-10]

### GENERAL RULEMAKING PROCEDURES

#### Publication of Petitions for Rulemaking and Exemptions in the "Federal Register"

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes to establish procedures for the publication in the FEDERAL REGISTER of summaries of certain petitions for rulemaking and exemptions. This would enhance the ability of any interested segment of the public to comment on these petitions. The proposal also provides for publication of summaries of denials of petitions for rulemaking and summaries of grants and denials of petitions for exemptions. This will increase public awareness of agency actions. These procedures are necessary to accomplish the FAA objective of increasing public knowledge of, and participation in, the agency's rulemaking which, in turn, will enchance the quality of administrative decisionmaking.

DATE: Comments must be received on or before: October 1, 1978.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-24), docket No. 18142, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Howard A. Bartnick, Office of the Chief Counsel, Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-3493.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Since this amendment is procedural in nature, notice and public procedure thereon is not required. However, the FAA invites interested persons to submit comments on any substantial legal or policy questions created by this proposal. In particular, comments are invited on the time limits contained in the proposed procedures and on the utility of the information proposed to be contained in the summaries. Communications should identify the regulatory docket or notice number and be submitted in duplicate

to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before October 1, 1978, 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

AVAILABILTIY OF NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 201-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

DISCUSSION OF THE PROPOSED RULE

During the preceding year, the FAA has intensified efforts to expedite its rulemaking and exemption programs and to make them more responsive to the public. This proposal is part of that effort. The proposal would increase early public participation in the agency's rulemaking process and enhance public awareness of agency actions.

The notice proposes revisions to procedures in part 11 of the Federal Aviation Regulations dealing with the processing of petitions for rulemaking. Except as otherwise indicated, the procedures proposed herein provide that the Administrator publishes a summary of a petition for rulemaking in the FEDERAL REGISTER. A summary of a petition for rulemaking would include: (1) The docket number of the petition; (2) the name of the petitioner; (3) a brief description of the general nature of the rule requested; (4) a brief description of the pertinent reasons presented in the petition for instituting rulemaking procedures; and (5) in appropriate situations, a list of questions to assist the FAA in obtaining public comment on the petition. The proposal requires the petitioner to submit a proposed summary for publication. The FAA would have the option of publishing that summary, in whole or in part, or its own. The FAA would also reserve the option of publishing these petitions verbatim if it deems it appropriate.

All public comments received on each summary of a petition would be maintained in the public docket that is established for that petition for rulemaking. Unless the Administrator, for good cause, finds a different time period appropriate, 60 days would be allowed for public comment. Timely comments would be considered by the Administrator before taking action on the petition.

Except as otherwise indicated, a summary of the denial of a petition for rulemaking also would be published in the FEDERAL REGISTER. A summary of a denial of a petition for rulemaking would include: (1) The docket number of the petition; (2) the name of the petitioner; (3) a brief description of the general nature of the rule requested; and (4) the disposition of the petition. Although in many cases the brief description of the rule requested may be repetitive of the information contained in the initial summary, the agency believes that this information should be published for the convenience of the public.

The notice also proposes revisions to those procedures in part 11 of the Federal Aviation Regulations dealing with the processing of petitions for exemptions. Except as otherwise indicated, the procedures proposed herein provide that the Administrator publishes a summary of a petition for exemption in the FEDERAL REGISTER. A summary of a petition for exemption would include: (1) The docket number of the petition; (2) the name of the petitioner; (3) a citation of each rule from which relief is requested; and (4) a brief description of the general nature of the relief requested. The proposal requires the petitioner to submit a proposed summary for publication. The FAA would have the option of publishing that summary, in whole or in part, or its own.

All public comments received on each summary of a petition would be maintained in the public docket that is established for that petition for exemption. Unless the Administrator, for good cause, finds a different time period appropriate, 20 days would be allowed for public comment. Timely comments would be considered by the Administrator before taking action on the petition.

Except as otherwise indicated, a summary of the grant or denial of a petition for exemption also would be published in the FEDERAL REGISTER. A summary of a grant or denial of a petition for exemption would include: (1) The docket number of the petition; (2) except for petitions for exemptions from the requirements of part 67 of this chapter, the name of the petitioner; (3) a citation of each rule from which relief is requested; (4) a brief description of the general nature of the relief granted or denied; and (5) the disposition of the petition. Although in many cases the brief description of the relief granted or denied may be repetitive of the information contained in the initial summary, the agency believes that this information should be published for the convenience of the public.

As a result of information submitted by the public in response to the publication of summaries of petitions for rulemaking and exemptions, the FAA's information gathering process would be supplemented. The FAA believes that its present information process would be enhanced and not delayed by these procedures. Therefore, there is no need to amend § 11.25(b)(1) of this chapter which contains the requirement that petitions for exemptions must be submitted at least 120 days before the proposed effective date of the exemption.

The summaries of petitions required by the procedures proposed by this notice would be published in the FEDERAL REGISTER on a weekly basis. The summaries of dispositions of petitions required by these procedures would be published on a monthly basis. Comments are specifically invited on these proposed publication dates.

All summaries published in the FEDERAL REGISTER would be filed in a single docket. This docket would be available to the public at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591.

The publication and comment procedures contained in this proposal would not apply to rules concerning airspace assignment and use processed under subpart D of part 11, petitions for rulemaking and exemptions concerning airworthiness directives processed under subpart E of part 11, or petitions for exemptions processed under part 139 of this chapter. The FAA believes that the publication and comment procedures for those rulemaking actions would create an undue administrative burden since many are routine or local in nature and others are not presently processed by the Washington headquarters of the FAA. For example, rules concerning airspace assignment and use include designations of Federal airways, special use airspace, jet routes, minimum en route IFR altitudes, and standard instrument approach procedures which are usually issued by FAA regional offices and concern local airspace and use situations. In addition, the vast majority of airworthiness directives, and exemptions to them, are processed by FAA regional offices. Further, these

documents are generally narrow in scope and of limited interest to the general public. Finally, part 139 exemptions are also processed by the regional offices.

Emergency exemptions processed under § 11.15 of this part also would be excepted from the publication and comment procedures.

The initial publication and comment procedures would not apply to petitions for exemptions from the requirements of part 67 of the Federal Aviation Regulations. Public comment on requests for individual medical exemptions from part 67 would have minimal value to the FAA and the opportunity to comment would be of no benefit to the general public. However, it is proposed that summaries of the grants or denials of those petitions for exemptions be published without the name of the petitioner. Comments are specifically invited on the usefulness of publishing this information.

Finally, the initial publication and comment procedures would not apply whenever the Administrator finds for good cause shown in a petition for exemption that action on the petition should not be delayed by the procedures. However, a summary of the grant or denial of that petition for exemption would be published.

Specifically, it is proposed that § 11.27 of the Federal Aviation Regulations be amended by the addition of five new paragraphs designated (b), (c), (h), (i), and (j). Paragraphs (b) and (c) would prescribe the procedures for the publication of summaries of petitions for rulemaking and exemptions in the FEDERAL REGISTER. These two paragraphs would also provide for the consideration of comments received in response to the publications. Paragraph (i) would except from the new publication and comment procedures contained in this section: (1) Petitions for rulemaking or exemptions processed under § 11.83 of the regulations; (2) petitions for emergency exemptions processed under § 11.15 of the regulations; and (3) petitions for exemptions processed under part 139 of the regulations. Paragraph (j) would except from the initial publication and comment procedures contained in paragraph (c) of this section: (1) Petitions for exemptions from the requirements of part 67 of the regulations; and (2) certain other exemptions when a good cause finding is made. Present paragraphs (b), (c), and (d) would be revised and covered in new paragraphs (d), (e), (f), (g), and (k) and changes would be made to paragraph (a), and new paragraphs (d), (e), (f), and (g) to make them consistent with the procedures proposed in new paragraphs (b), (c), (i), and (j). New paragraphs (e), (f), and (g) would also provide for the publication of summaries of denials of petitions for rulemaking, and summaries of grants or denials of petitions for exemptions. Finally, new paragraph (h) would list the required information to be contained in the summaries of denials of petitions for rulemaking and exemptions.

In addition, § 11.25 would be amended to require a petitioner to file a summary with his petition, which the FAA would have the option of using, in whole or in part, as the summary published under new paragraph (b) or (c) of § 11.27 of the regulations.

Further, § 11.15 would be amended to provide that the publication and comment procedures of § 11.27 would not be applicable to § 11.15 emergency situations.

Section 11.11 would be amended to provide for the docketing of written material received in response to summaries of petitions for rulemaking and exemptions. It also would be amended to provide for the docketing of denials of petitions for rulemaking. Finally, the docketing of all summaries published under § 11.27 would be provided for in the section.

## DRAFTING INFORMATION

The principal authors of this document are Howard A. Bartnick, Office of the Chief Counsel, and Donald A. Schroeder, Flight Standards Service.

## THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend part 11 of the Federal Aviation Regulations (14 CFR Part 11) as follows:

1. By revising the first sentence of § 11.11 to read as follows:

**§ 11.11 Docket.**

Official FAA records relating to rulemaking actions, including: (1) Proposals, (2) notices of proposed rulemaking, (3) written material received in response to notices, (4) petitions for rulemaking and exemptions, (5) written material received in response to summaries of petitions for rulemaking and exemptions, (6) petitions for rehearing or reconsideration, (7) petitions for modification or revocation, (8) notices denying petitions for rulemaking, (9) notices granting or denying exemptions, (10) summaries required to be published under § 11.27, (11) reports of proceedings conducted under § 11.47, (12) notices denying proposals, and (13) final rules or orders are maintained in current docket form in the Office of the Chief Counsel. * * *

**§ 11.15 [Amended]**

2. By amending the second sentence of § 11.15 to read: "The procedural requirements of §§ 11.53, 11.71, and 11.91, and the publication and comment procedures of § 11.27 need not be followed."

3. By revising § 11.25 by adding a new paragraph (c) to read as follows:

**§ 11.25 Petitions for rulemaking or exemptions.**

* * * * *

(c) A petition filed under this section must contain a summary which may be published in the FEDERAL REGISTER as provided in § 11.27 of this part.

4. by revising § 11.27 to read as follows:

**§ 11.27 Action on petitions for rulemaking or exemptions.**

(a) *General.* Except for the publication and comment procedures provided for in this section, no public hearing, argument, or other formal proceeding is held directly on a petition, filed under § 11.25, before its disposition by the FAA.

(b) *Publication of summary of petition for rulemaking.* After receipt of a petition for rulemaking, except as otherwise provided in paragraph (i) of this section, the Administrator publishes a summary of the petition in the FEDERAL REGISTER which includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A brief description of the general nature of the rule requested;

(4) A brief description of the pertinent reasons presented in the petition for instituting rulemaking procedures; and

(5) In appropriate situations, a list of questions to assist the FAA in obtaining comment on the petition.

Unless the Administrator, for good cause, finds a different time period appropriate, 60 days will be allowed for public comment. Timely comments received will be considered by the Administrator before taking action on the petition.

(c) *Publication of summary of petition for exemption.* After receipt of a petition for exemption, except as otherwise provided in paragraphs (i) and (j) of this section, the Administrator publishes a summary of the petition in the FEDERAL REGISTER which includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A citation of each rule from which relief is requested; and

(4) A brief description of the general nature of the relief requested.

Unless the Administrator, for good cause, finds a different time period appropriate, 20 days will be allowed for public comment. Timely comments re-

ceived will be considered by the Administrator before taking action on the petition.

(d) *Instituting rulemaking procedures based on a petition.* If the Administrator determines, after consideration of the comments received in response to a summary of a petition for rulemaking, if any, that the petition discloses adequate reasons, the FAA institutes rulemaking procedures.

(e) *Grant of petition for exemption—summary.* If the Administrator determines, after consideration of the comments received in response to a summary of a petition for exemption, if any, that the petition is in the public interest, the Administrator grants the exemption and, except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the grant of the petition for exemption in the FEDERAL REGISTER. A summary of a grant of a petition for exemption includes—

(1) The docket number of the petition;

(2) Except for petitions for exemptions from the requirements of part 67 of this chapter, the name of the petitioner;

(3) A citation of each rule from which relief is requested;

(4) A brief description of the general nature of the relief granted; and

(5) The disposition of the petition.

(f) *Denial of petition for rulemaking.* If the Administrator determines, after consideration of the comments received in response to a summary of a petition for rulemaking, if any, that the petition does not justify instituting rulemaking procedures, the FAA notifies the petitioner to that effect. Except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the denial of the petition for rulemaking in the FEDERAL REGISTER in accordance with paragraph (h) of this section.

(g) *Denial of petition for exemption.* If the Administrator determines, after consideration of the comments received in response to a summary of a petition for exemption, if any, that the petition does not justify granting the requested exemption, the FAA notifies the petitioner to that effect. Except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the denial of the petition for exemption in the FEDERAL REGISTER in accordance with paragraph (h) of this section.

(h) *Summary of denial of petition for rulemaking or exemption.* A summary of a denial of a petition for rulemaking or exemption includes—

(1) The docket number of the petition;

(2) Except for petitions for exemptions from the requirements of part 67 of this chapter, the name of the petitioner;

(3) In the case of a denial of a petition for exemption, a citation of each rule from which relief is requested;

(4) A brief description of the general nature of the rule or relief requested; and

(5) The disposition of the petition.

(i) *General exceptions.* The publication and comment procedures of paragraphs (b) through (h) of this section do not apply to the following:

(1) Petitions for rulemaking or exemptions processed under § 11.83 of this part.

(2) Petitions for emergency exemptions processed under § 11.15 of this part.

(3) Petitions for exemptions processed under part 139 of this chapter.

(j) *Exceptions to publication of summary of petition for exemption.* The publication and comment procedures for paragraph (c) of this section do not apply to the following:

(1) Petitions for exemptions from the requirements of part 67 of this chapter.

(2) Whenever the Administrator finds for good cause shown in a petition for exemption that action on the petition should not be delayed by the publication and comment procedures.

(k) *Additional specific provisions.* Specific provisions covering actions on petitions are set forth in Subpart C of this part.

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

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the proposed "Department of Transportation Regulatory Policies and Procedures" published in the FEDERAL REGISTER June 1, 1978 (43 FR 23925). In addition, this proposal is procedural in nature and the Federal Aviation Administration has determined that the expected impact of the proposal is so minimal that it does not require an evaluation.

Issued in Washington, D.C., on July 19, 1978.

CLARK H. ONSTAD,
*Chief Counsel.*

[FR Doc. 78-20463 Filed 7-21-78; 8:45 am]

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[4910-13]

[14 CFR Part 39]

[Docket No. 78-SW-16]

## AIRWORTHINESS DIRECTIVES

### Swearingen Aviation Corp. Models SA226T, SA226AT, and SA226TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) applicable to Swearingen Aviation Corp. models SA226T, SA226AT, and SA226TC by requiring a modification to the engine nacelles of all such models. This amendment is needed because the FAA has determined that the repetitive inspections of the wheel wells, as specified in the AD, are not adequate to prevent all leaks.

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

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Docket No. 78-SW-16, Southwest Region, P.O. Box 1689, Fort Worth, Tex. 76101.

The applicable service bulletins may be obtained from Swearingen Aviation Corp., P.O. Box 32486, San Antonio, Tex. 78284.

A copy of each of the service bulletins is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591, or Office of the Regional Counsel, Building 3B, Room 100, 4400 Blue Mound Road, Fort Worth, Tex.

FOR FURTHER INFORMATION CONTACT:

Jack W. Ligon, Systems and Equipement Section, Engineering and Manufacturing Branch, telephone 817-624-4911, extension 505, or Randy Whitlock, Propulsion Section, extension 526.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be

available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

This notice proposes to amend amendment 39-2735, (41 FR 43713), AD76-SW-51, which currently requires inspection of the wheel wells every 50 hours for hydraulic and fuel leaks on Swearingen Aviation Corp. aircraft, models SA226T, SA226AT, and AS226TC airplanes. After issuing the AD76-SW-51, FAA has determined that if a specific modification is made to engine nacelles, the repetitive inspections called for in the AD are no longer necessary. Therefore, the FAA is considering amending amendment 39-2735 by requiring the Swearingen Aviation Corp. models SA226T, SA226AT, and SA226TC airplanes engine nacelles be modified in accordance with Swearingen Aviation Corp. service bulletins 21-009 dated May 11, 1977, "Addition of Bleed Air Heat Exchangers" and 54-003 dated April 28, 1977, "Improved Fire Resistance of the Fuel and Hydraulic Systems."

DRAFTING INFORMATION

The principal authors of this document are Jack W. Ligon and Randy Whitlock, Southwest Region Flight Standards Division, and James O. Price, General Attorney, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) by amending amendment 39-2735, (41 FR 43713), AD76-SW-51 by adding the following paragraphs:

E. Within 30 days after the effective date of this AD:

(1) Modify Swearingen Aviation Corp. models SA226TC (applies to serial Nos. TC-201 through TC-212), SA226T (applies to serial Nos. T-201 through T-251, except T-249) and SA226AT (applies to serial Nos. AT-001 through AT-033, except AT-025) airplanes in accordance with Swearingen Aviation Corp. service bulletin SB 21-009 dated May 11, 1977, "Addition of Bleed Air Heat Exchangers,"

(2) Modify Swearingen Aviation Corp. models SA226TC (applies to serial Nos. TC-201 through TC-228, except TC-227E and TC-228E), SA226T (applies to serial Nos. T-201 through T-271), and SA226AT (applies to serial Nos. AT-001 through AT-056) airplanes in accordance with Swearingen Aviation Corp. service bulletin SB 54-003 dated April 28, 1977, "Improved Fire Resistance of the Fuel and Hydraulic Systems," or

(3) Modify the above airplane models in a manner approved by the Chief, Engineering and Manufacturing Branch, ASW-210, Southwest Region.

F. When this modification is made, the repetitive inspections described in paragraphs A and B of this AD are not longer necessary.

(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 Fort Worth, Tex., on July 11, 1978.

PAUL J. BAKER,
*Acting Director,*
*Southwest Region.*

[FR Doc. 78-20369 Filed 7-21-78; 8:45 am]

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[4910-13]

[14 CFR Part 39]

[Airworthiness Docket No. 78-ASW-23]

AIRWORTHINESS DIRECTIVE

**Bell Model 204B, 205A-1, and 212 Helicopters**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require replacement of main rotor inboard strap fittings at 1,200 hours total time in service on Bell model 204B, 205A-1, and 212 helicopters. The AD is prompted by reports of five model 212 fittings, P/N 212-010-103-5, that had fatigue cracks in the thrust shoulder radius. Cracks in the thrust shoulder could result in failure of the fitting and loss of a retention strap and a main rotor blade.

DATES: Comments must be received by August 24, 1978. Proposed effective date of the AD will be October 24, 1978.

ADDRESSES: Send comments of this proposal in triplicate to: Regional Counsel, Attention: Docket 78-ASW-23, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. Bell service information may be obtained from Bell Helicopter Textron, P.O. Box 482, Fort Worth, Tex. 76101, or from the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Tex. 76101.

FOR FURTHER INFORMATION CONTACT:

James H. Major, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex., telephone 817-624-4911, extension 516.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the development of the final rule by submitting such written or oral comments as they desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All comments will be recorded and considered by the Director before taking final action and the proposal may be changed as a result of the comments received. All comments will be available for examination before and after the closing date for comments in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Tex. 76101.

The FAA has received reports of three model 212 main rotor inboard fittings, P/N 212-010-103-5, having cracks in the thrust shoulder radius at 2,482 hours (two fittings) and at 2,762 (one fitting). Bell Helicopter Textron has received two additional reports of model 212 fittings having cracks. As a result of these reports Bell issued service bulletins No. 204-78-2, 205-78-3, and 212-78-3 to establish a 1,200-hour replacement time for certain inboard strap fittings. The reported cracks may result in failure of the fitting thrust shoulder and possible loss of a main rotor retention strap and a main rotor blade. Bell model 204B and 205A-1 helicopters use fittings, P/N 204-012-102-5 that are similar to fittings, P/N 212-010-103-5 and these helicopters have similar operating conditions. Since cracked fittings are likely to develop in model 204B, 205A-1, and 212 helicopters, the proposed AD would require replacement of inboard strap fittings P/N 204-012-102-5 or 212-010-103-5, on the appropriate model helicopter, on or before attaining 1,200 hours total time in service, within certain limitations specified in the proposal, for Bell model 204B, 205A-1, and 212 helicopters. Bell Helicopter Textron has new design fittings, P/N 204-012-102-9 and 212-010-103-7, that are shot peened on all tension-loaded surfaces. These new fittings have a 2,400-hour retirement time but these fittings are not a part of this rulemaking.

DRAFTING INFORMATION

The principal authors of this document are James H. Major, Aerospace

Engineer, Flight Standards Division, and James O. Price, General Attorney, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex. 76101.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

BELL: Applies to Bell model 204B and 205A-1 helicopters equipped with fittings P/N 204-012-102-5 and model 212 helicopters equipped with fittings P/N 212-010-103-5, certificated in all categories.

Compliance required as indicated.

(a) Remove main rotor inboard strap fittings with 1,100 or more hours' total time in service on the effective date of this airworthiness directive (AD) within 100 hours' time in service.

(b) Remove main rotor inboard strap fittings with less than 1,100 hours' total time in service on the effective date of this AD, prior to attaining 1,200 hours' total time in service.

(c) The retirement time of the fittings P/N 204-012-102-5 and 212-010-103-5 is reduced from 3,000 to 1,200 hours time in service.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.85.)

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 Fort Worth, Tex., on July 11, 1978.

PAUL J. BAKER,
*Acting Director,*
*Southwest Region.*

[FR Doc. 78-20372 Filed 7-21-78; 8:45 am]

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[4910-13]

[14 CFR Part 39]

[Docket No. 78-CE-13-AD]

**AIRWORTHINESS DIRECTIVE**

**Cessna Models 120, 140, 150, 170, 172, 175, 177, 180, 182, 185, 188, 190, 195, 205, 206, 207, and 210 Series Airplanes**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to add an airworthiness directive (AD) applicable to the noted Cessna airplanes, which would require removal or proper reinstallation of the electrical wiring that routes current to the optional cigar lighter. This action is proposed because of several incidents in which the wire was shorted to ground resulting in electrical failure, smoke in the cockpit, and/or fire in the wire bundle behind the instrument panel. This wire does not have a protective device, such as a fuse or circuit breaker, that would prevent wire overheat/fire.

DATES: Comments must be received on or before October 1, 1978.

ADDRESSES: Send comments on the proposal to FAA, Central Region, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 78-CE-13-AD, 601 East 12th Street, Kansas City, Mo. 64106.

FOR FURTHER INFORMATION CONTACT:

Earsa L. Tankesley, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3446.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, and/or arguments as they may desire. Communications should identify the AD docket number, and be submitted in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA has received several reports pertaining to Cessna model airplanes which involved smoke in the cockpit, electrical system failure, and/or fire in the wire or wire bundle behind the instrument panel. These incidents have occurred as a result of the jam nut securing the cigar lighter receptacle to the instrument panel becoming loose and shorting the electrical connection at rear of receptacle to ground against the instrument panel. Reports received indicate the problem is more predominant in the Cessna models 177 and 177RG airplanes. However, research into the type design of other Cessna single-engine models has revealed the potential exists for similar incidents. The Cessna Aircraft Co. has offered the cigar lighter as optional equipment in its single-engine models. The wiring configuration has varied between models and within model series. There are some airplanes wired such that there is no fuse or circuit breaker at the bus bar to protect the wire from overheat due to a short anywhere between the bus and the cigar lighter. Other configurations have the wire connected to a circuit breaker serving another system. In these models, the tripping current of this breaker is too high to properly protect the wire from overheat.

The FAA believes that the reported incidents and the findings during the investigation establish the fact that an unsafe condition exists and that corrective action is necessary to prevent the occurrence of an accident and serious injury. Accordingly, since the unsafe condition described herein is likely to exist in other airplanes of the same type design, an AD is proposed that would require removal or proper reinstallation of the optional cigar lighter wiring from the noted Cessna Aircraft.

DRAFTING INFORMATION

The principal authors of this document are Robert L. Klapprott, Flight Standards Division, Central Region, and John L. Fitzgerald, Jr., Office of the Regional Counsel, Central Region.

THE PROPOSED AMENDMENT

The FAA proposes to amend section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

CESSNA: Applies to the following model series and serial numbers airplanes certified in all categories:

*Model Series and Serial Numbers*

120, 140—8000 through 15075 and 15200 through 15724.
150—150065062 through 15075564.
A150—A15000001 through A15000480.
170—18000 through 20999 and 25000 through 27169.
172—28000 through 29999, 46001 through 47746, 17247747 through 17250572, and 17259224 through 17267584.
R172—R1722000 through R1722724.
P172—P17257120 through P17257189.
175—55001 through 56777 and 17556778 through 17557119.
177—17700001 through 17702314.
177RG—177RG0001 through 177RG0788.

180—30000 through 32999, 50000 through 50355, and 18051608 through 18052770.
182—33000 through 34999, 51001 through 51556, and 18254680 through 18265965.
185—18500968 through 18503458.
188—188-0001 through 188-0572 and 18800573 through 18803046.
190, 195—7001 through 7999 and 16000 through 16183.
210-5 (205) and 210-5A (205A)—205-0320 through 205-0577.
206, U206, TU206, P206, TP206—206-0001 through 206-0275, U206-0276 through U206-1444, U20601445 through U20604074, P206-001 through P206-0603, and P20600604 through P20600647.
207—20700001 through 20700414 (except those aircraft with factory installed 24-volt electrical system).
210, T210—21058162 through 21061039 and T210-0001 through T210-0454.

Compliance: Requirement within the next 100 hours time in service after effective date of this AD, unless already accomplished.

To prevent an inflight electrical system failure, smoke in cockpit, and/or fire in the wire bundle behind the instrument panel, accomplish the following:

(A) Disconnect the wire, at the electrical system bus, that connects the bus to the cigar lighter receptacle. (The wire is connected to either the bus side or equipment side of a circuit breaker.) Either remove the wire from the aircraft after disconnecting the opposite end from the lighter receptacle or reconnect it to the electrical system bus by using an existing or a newly installed circuit protection device that is the proper rating to protect the wire gage used for this circuit. (The proper rated circuit protection device to be used may be determined by consulting FAA Advisory Circular 43.13-1A.)

(B) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

(Sec. 313(a), 601, and 603, of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c) of the 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 Kansas City, Mo., on July 13, 1978.

JOHN E. SHAW,
*Acting Director,*
*Central Region.*

[FR Doc. 78-20373 Filed 7-21-78; 8:45 am]

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[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-30]

## TRANSITION AREA: BEEVILLE, TEX.

### Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Beeville, Tex. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Beeville Municipal Airport. The circumstance which created the need for the action was the establishment of a nondirectional radio beacon (NDB) on the airport.

DATE: Comments must be received on or before August 23, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (43 FR 440) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Alteration of the transition area at Beeville, Tex., will necessitate an amendment to this subpart.

### COMMENTS INVITED

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

### AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

### THE PROPOSAL

The FAA is considering an amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Beeville, Tex. The FAA believes this action will enhance IFR operations at the Beeville Municipal Airport by providing additional controlled airspace for aircraft executing proposed instrument approach procedures using the newly established NDB located on the airport. Subpart G of part 71 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

### DRAFTING INFORMATION

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

### THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) by altering the Beeville, Tex., transition area to read as follows:

BEEVILLE, TEX.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of NAS Chase Field (latitude 28°21'50" N., longitude 97°39'40" W.); within 2 miles each side of the NAS Chase TACAN 129° and 321° radials extending from the 7-mile radius area to 10 miles northwest and southeast of the TACAN; within 2 miles each side of the 339° bearing from the NAS Chase RBN extending from the 7-mile radius area to 12 miles north of the RBN; within a 6.5-mile radius of Beeville Municipal Airport (latitude 28°22'00" N., longitude 97°48'00" W.) within 3.5 miles each side of the 138°

bearing from the Beeville NDB (latitude 28°22'03" N., longitude 97°47'39" W.) extending from the 6.5-mile radius to 11.5 miles southeast of the NDB.

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

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

Issued in Fort Worth, Tex., on July 12, 1978.

PAUL J. BAKER,
*Acting Director,*
*Southwest Region.*

[FR Doc. 78-20371 Filed 7-21-78; 8:45 am]

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[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-28]

## TRANSITION AREA

### Proposed Designation: Hebbronville, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose designation of a transition area at Hebbronville, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument approach procedures to the Jim Hogg County Airport. The circumstance which created the need for the action was a requirement to provide capability for flight under instrument weather conditions to the airport.

DATES: Comments must be received by August 23, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex. An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (43 FR 440) of FAR part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of the transition area at Hebbronville, Tex., will necessitate an amendment to this subpart.

### COMMENTS INVITED

Intersted persons may submit such written data, views or arugments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

### AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

### THE PROPOSAL

The FAA is considering an amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Hebbronville, Tex.[1] The FAA believes this action will enhance IFR operations at the Jim Hogg County Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures using the newly established nondirectional radio beacon (NDB) located on the airport. Subpart G of part 71 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

[1]Map filed as part of the original document.

### DRAFTING INFORMATION

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

### THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) as republished (43 FR 440) by adding the Hebbronville, Tex., transition area as follows:

#### HEBBRONVILLE, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Jim Hogg County Airport (lat. 27°20'57" N., long. 98°44'12" W.), within 3.5 miles each side of the 326° bearing from the proposed NDB (lat. 27°21'13" N., long. 98°44'38" W.) extending from the 5-mile radius to 11.5 miles northwest of the proposed NDB.

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

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

Issued in Fort Worth, Tex., on July 11, 1978.

PAUL J. BAKER,
*Director,*
*Southwest Region.*

[FR Doc. 78-20375 Filed 7-21-78; 8:45 am]

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[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-RM-17]

## DENVER TERMINAL CONTROL AREA

### Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment proposes to alter the Denver Terminal Control Area (TCA). The amendment is necessary because of the relocation of the Denver VOR on November 2, 1978. The present terminal control area utilizes the Denver VOR to describe boundaries of the terminal control area and the amendment will utilize the new Denver VOR to describe boundaries.

DATE: Comments must be received on or before August 21, 1978.

ADDRESS: Send comments on the proposal to: Chief, Air Traffic Division, Attention: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph T. Taber, Airspace Specialist, Operations, Procedures and Airspace Branch (ARM-537), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colo. 80010, telephone 303-837-3937.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The Federal Aviation Administration is considering an amendment to subpart K of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the terminal control area (TCA) at Denver, Colo. The present terminal control area is based in part on the Denver VOR which is scheduled to be relocated on November 2, 1978 making the present terminal control area incorrect. It is proposed to amend the terminal control area utilizing the new Denver VOR and altering some boundaries and floors to increase the effectiveness of the terminal control area for all users. Additionally, some floor changes allow for transiting the area without penetrating the terminal control area. Accordingly, the Federal Aviation Administration proposes to amend subpart K of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending 71.401 so as to alter the following terminal control area to read:

DENVER, COLO.

Denver, Colo., terminal control area, primary airport, Denver Stapleton International Airport (lat. 39°45'55" N., long. 104°52'46" W.) Denver VORTAC (lat. 39°48'02.12" N., long. 104°53'12.26" W.). Denver—Stapleton International distance measuring equipment (DME) antenna, (lat. 39°45'51" N., Long. 104°53'54" W.).

BOUNDARIES

Area A: That airspace extending upward from the surface to and including 11,000 feet MSL beginning at a point 10 miles north of the Stapleton International DME antenna and 1.5 miles west of the Denver VORTAC 004° radial; thence cw along the 10 mile radius arc of the Stapleton International DME antenna to and south parallel 2.5 miles east of the Denver VORTAC 004° radial, to and cw along the 7-mile radius area of the Stapleton International DME antenna to and west along Colfax Avenue to and south parallel 3.5 miles east of the Denver VORTAC 184° radial to and cw along the 7-mile radius arc of the Stapleton International DME antenna to and north parallel 3.5 miles west of the Denver VORTAC 184° radial to and west parallel 5 miles south of the Denver VORTAC 273° radial to and cw along the 7-mile radius of the Stapleton International DME antenna to and north parallel 1.5 miles west of the Denver VORTAC 004° radial to point of beginning excluding prohibited area P26.

Area B: That airspace extending upward from 7,000 feet MSL to and including 11,000 feet MSL bounded on the north by the 16-mile point of the Stapleton International DME antenna and 3.5 miles west of the Denver VORTAC 004° radial, thence cw along the 16-mile radius arc of the Stapleton International DME antenna to and south parallel 4 miles east of the Denver VORTAC 004° radial to and cw along the 10-mile radius arc of the Stapleton International DME antenna to and east parallel 1.5 miles north of the Denver VORTAC 093° radial to and cw along the 16-mile radius arc of the Stapleton International DME antenna to and west along Colfax Avenue to and cw along the 10-mile radius arc of the Stapleton International DME antenna to and north parallel 3.5 miles west of the Denver VORTAC 004° radial to point of beginning excluding areas A and C.

Area C: That airspace extending upward from 7,500 feet MSL to and including 11,000 feet MSL bounded on the north by Colfax Avenue, on the east by the 16-mile radius arc of the Stapleton International DME antenna on the west by area A and a line parallel 3.5 miles west of the Denver VORTAC 184° radial to and east along a line 8.5 miles south and parallel of the extended centerline of runway 26L/8R Stapleton International Airport to and southeast bound along the 162° radial of the Denver VORTAC to the 16-mile radius arc of the Stapleton International DME antenna.

Area D: That airspace extending upward from 8,000 feet MSL to and including 11,000 feet MSL within a 16-mile radius of the Stapleton International DME antenna bounded on the west by 105°11'00" W. and that airspace east of Denver between the 16-mile and 20-mile radius circles centered on the Stapleton International DME antenna bounded on the north by Interstate 70 and on the west by the 162° radial of the Denver VORTAC excluding areas A, B and C.

Area E: That airspace extending upward from 9,000 feet MSL to and including 11,000 feet MSL between the 16-mile and 20-mile radius circles centered on the Stapleton International DME antenna bounded on the north by a line 1.5 miles north of the Denver VORTAC 093° radial and on the south by Interstate 70 and that airspace north of Denver bounded on the west by a line 3.5 miles west of the Denver VORTAC 004° radial and on the east by a line 4 miles east of the Denver VORTAC 004° radial.

Area F: That airspace extending upward from 10,000 feet MSL to and including 11,000 feet MSL between the 16-mile and 20-mile radius circles centered on the Stapleton International DME antenna excluding areas D and E and that area west of 105°11'00" W. and northwest of a line 12 miles west of the Denver VORTAC 004° radial between the 16-mile and 20-mile radius arcs of the Stapleton International DME antenna.

DRAFTING INFORMATION

The principal authors of this document are Mr. Joseph T. Taber, Air Traffic Division, and Mr. Daniel J. Peterson, Office of the Regional counsel, Rocky Mountain region.

(Section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 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 propsal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Issued in Aurora, Colo. on July 12, 1978.

M. M. MARTIN,
*Director,*
*Rocky Mountain Region.*

[FR Doc. 78-20374 Filed 7-21-78; 8:45 am]

[1505-01]

## CIVIL AERONAUTICS BOARD

[SPDR-65; dated: July 7, 1978]

[14 CFR Parts 371, 372a, 373, 378, 378a]

**ADVANCE BOOKING CHARTERS; TRAVEL GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS, INCLUSIVE TOUR CHARTERS; ONE-STOP-INCLUSIVE TOUR CHARTERS**

**Notice of Proposed Rulemaking to Permit Air Taxi Operators and Commuter Air Carriers to Operate Special Regulation Charters**

*Correction*

In FR Doc. 78-19497 appearing on page 30295 in the issue of Friday, July 14, 1978, on page 30297 in § *378a.42 Tariffs to be on file for charter trips.*, the 3d line should read, "unless it shall have on file with * * *".

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[8010-01]

## SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release No. 34-14970; File No. S7-747]

## SHAREHOLDER COMMUNICATIONS, SHAREHOLDER PARTICIPATION IN THE CORPORATE ELECTORAL PROCESS AND CORPORATE GOVERNANCE GENERALLY

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Commission is proposing for comment rule, form and schedule amendments intended to provide investors with information relevant to an informed assessment of the effectiveness of registrants' boards of directors, the terms of settlements of proxy contests, and the voting policies and procedures of institutions subject to the Commission's proxy rules which exercise voting rights with respect to equity securities held for their own accounts or for the accounts of others. Additionally, the Commission requests comments on a proposed rule which would afford shareholder-proponents an opportunity to review management statements in opposition to shareholder proposals prior to the mailing of issuers' proxy soliciting materials.

DATE: Comments must be received on or before September 18, 1978.

ADDRESS: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Barbara L. Leventhal, Richard B. Nesson or Jennifer A. Sullivan, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 202-755-1750, 755-1754 or 376-8090.

SUPPLEMENTARY INFORMATION: The SEC today published for comment proposed amendments to Regulation 14A (17 CFR 240.14a-1 et seq.) and schedule 14A (17 CFR 240.14a-101) under the Securities Exchange Act of 1934 [15 U.S.C. 78a, et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)], as well as related amendments to forms 8-K (17 CFR 249.308) and 10-Q (17 CFR 249.308a) thereunder. The proposals are designed to increase the information available to investors regarding (1) the structure, composition and functioning of issuers' boards of directors; (2) resignations of directors; (3) attendance at board and committee meetings; (4) the voting policies and procedures of certain institutions subject to the Commission's proxy rules which exercise voting rights with respect to equity securities held for their own accounts or for the accounts of others; and (5) the terms of settlement of proxy contests. The Commission also has requested comments on a rule proposal which, if adopted, would enable shareholder-proponents to review management statements in opposition to shareholder proposals prior to the mailing of issuers' proxy soliciting materials. These proposals represent the first stage of the Commission's response to issues which have been raised in connection with its ongoing re-examination of rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally.

### I. Background

In Securities Exchange Act Release No. 13482 (April 28, 1977), 42 FR 23901 (May 11, 1977), the Commission announced its intention to conduct a broad re-examination of its rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. The release indicated that the decision to undertake the study was based, in part, on the fact that recent events, such as the numerous corporate disclosures concerning questionable and illegal payments, had served to focus public attention on the subject of corporate accountability, and raised questions about the adequacy of existing checks on corporate management. These events underscored the concerns expressed many years ago by Berle and Means, and more recently by numerous observers,[1] that directors who are chosen by management do not effectively monitor management conduct, and furthermore, since elections of directors are most often mere ratifications of management slates, directors are not answerable to shareholders through the corporate electoral process.

Preparatory to holding public hearings, written comments were solicited on a number of questions relating to (1) the adequacy of existing avenues of communication between shareholders and corporations, and, particularly, whether shareholders should be provided with more information than is now available with respect to socially significant matters affecting their corporations; (2) whether rule 14a-8, regarding shareholder proposals, should be amended to further facilitate the presentation of shareholder views and concerns in the corporate proxy materials; (3) the role of shareholders in the corporate electoral process, and whether the Commission should amend its proxy rules to provide shareholders access to corporate proxy materials for the purpose of nominating persons of their choice to serve on boards of directors; and (4) whether additional disclosure relevant to an assessment of the quality and integrity of management should be required. The Commission also raised general inquiries concerning the need for Federal minimum standards or Federal chartering legislation, the role of the self-regulatory organizations in improving corporate governance, and the costs and benefits associated with various regulatory approaches.

On August 29, 1977, the Commission published a second release [2] announcing the schedule for public hearings, and setting forth a restatement of the issues to be considered based on the public comments which had already been received. The release stressed:

> While the proxy solicitation process is indeed a central focus of the present inquiry it is clear that the issues being studied transcend the proxy rules in significance, and include the broader and more fundamental question of how corporations can best be made more responsive to their shareholders and the public at large.[3]

The public hearings commenced in Washington on September 29, 1977, and continued for 5½ weeks, with sessions held in Los Angeles, New York

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[1] A. Berle and G. Means, "The Modern Corporation and Private Property" (1932); See, e.g., Schwartz, "A Case For Federal Chartering of Corporations," 31 Bus. Law. 1125 (1976); Moscow, "The Independent Director," 28 Bus. Law. 9 (1972); Eisenberg, "Access to the Corporate Proxy Machinery," 83 Harv. L. Rev. 1489 (1970).

[2] Securities Exchange Act Release No. 13901 (August 29, 1977), 42 FR 44860 (Sept. 7, 1977).

[3] Id. at 4.

and Chicago. In total, more than 300 persons and organizations including corporations, business associations, government officials, public interest and religious groups, law firms, bar associations, financial analysts, academics, accountants, and individuals submitted written comments or testified during the proceedings. These persons expressed a multitude of views on a large number of issues ranging from narrow technical questions arising under existing proxy rules to broad philosophical inquiries concerning means by which corporations can be made more responsive to shareholders and the public at large.[4]

Despite the diversity of opinion expressed with respect to the scope of existing problems in corporate governance and corporate accountability and the means by which reform could best be achieved, there was general agreement among a majority of commentators that a strong board of directors, which is able to exercise independent judgment, is a key element in accountability. Various methods of strengthening the independence of corporate boards were suggested, including voluntary action by corporations to nominate more outside directors to serve on their boards and to establish strong committee systems, the creation of expanded opportunities for meaningful shareholder participation in the corporate electroal process, and the adoption by the Commission and/or the self-regulatory organizations of new disclosure and substantive requirements relating to the structure, composition, and functions of corporate boards. A number of commentators also expressed their support for the enactment by Congress of legislation which would mandate certain changes in board composition, responsibilities, and operations.

Similarly, although conflicting views were expressed concerning the proper role of the Commission in improving corporate governance, commentators voiced substantial support for the promulgation of disclosure requirements by the Commission which are designed to provide investors with information related to matters affecting corporate governance and to stimulate the adoption by registrants of improved governance mechanisms.

Based on its review of the record in this proceeding, and in light of the significance, complexity, volume, and variety of issues under consideration, the Commission has determined to address the issues which have been raised in stages. Stage one, consisting of the publication of the rulemaking proposals contained herein, is intended primarily to provide investors with expanded information on certain matters, including the structure, composition, and functioning of registrants' boards of directors and the voting policies and procedures of institutions subject to the Commission's proxy rules which exercise voting power with respect to equity securities held for their own accounts or for the accounts of others.

Stage two, the publication of a comprehensive staff report, will address some of the more complex questions which have been raised in this proceeding relating to corporate governance and the means by which corporations can best account to shareholders and the public. As presently contemplated, the report will endeavor to discuss such issues as existing checks on corporate conduct, available shareholder remedies, the role of the board of directors and the need for structural board reforms and clarification of directors' responsibilities, and the respective roles of the private sector, shareholders, the Commission, the self-regulatory organizations and Congress in corporate accountability.

Following publication of the staff report, the Commission will consider as the third stage of this proceeding what further action, if any, is appropriate with respect to shareholder communications and shareholder participation in the corporate electoral process generally and will determine whether to publish additional rulemaking proposals and to recommend to Congress or support new legislation which would affect corporate governance.

## II. Proposed Rules

### A. Rules which would require increased disclosure concerning the structure, composition and functions of Corporate Boards of Directors

In Securities Exchange Act Release Nos. 13482 and 13901 (April 28, 1977 and August 29, 1977), the Commission requested public comments and testimony on the advisability of developing a number of new disclosure requirements applicable to proxy statements. The contemplated disclosure items were directed primarily at providing shareholders with information about the structure, composition and functions of corporate boards of directors. Among the issues raised were the desirability of disclosing the existence, responsibilities and composition of nominating and other key standing committees of the board; the need for expanded information about business and/or personal relationships between any nominee or his affiliates and the issuer or its officers and directors; whether information about the time devoted to corporate affairs and issues dealt with by incumbents in the previous fiscal year would be meaningful; the usefulness of information relating to director resignations and/or decisions not to stand for re-election; the extent to which information relating to other board memberships and certain outside activities would reflect potential conflicts of interest or give a meaningful indication of the time available for services to the issuer; and whether disclosure requirements relating to management remuneration should be amended to call for more detailed and comprehensive information than is currently available.[5] While reaction to the various disclosure proposals was mixed, as noted above, the vast majority of commentators who addressed these questions expressed support for the development of improved disclosure requirements.

The Commission has determined to publish for comment several rule proposals similar to those described above.[6] The Commisson believes that the publication of these proposals, which are intended to facilitate informed voting decisions by providing shareholders with information material to an assessment of the quality and effectiveness of corporate boards of di-

[4] In order to facilitate further consideration of these issues by interested members of the public, the Commission has determined to make available on written request a copy of a staff prepared summary of comments and testimony submitted in the course of this proceeding. The summary, which will be available by July 25, 1978, can be obtained by writing to SEC Publications, 500 North Capitol Street, Washington, D.C. 20509. It should be noted, however, that the actual written submissions and oral testimony received in this proceeding, and not the summaries and future analyses thereof, will form the basis for the Commission's consideration of any final rules designed to revise or amend the proxy rules.

[5] Proposed amendments to disclosure requirements relating to management remuneration will be the subject of a separate release and are not discussed herein.

[6] A number of similar revisions to Schedule 14A had been published for comment prior to the institution of the proxy rule reexamination. These proposed amendments to Schedule 14A would require information regarding the background of directors and nominees, including memberships on any committee of the board of directors, all directorships of any other reporting company, the nature of any family relationships with any other director or nominee and a description of any of certain specified events which have occurred during the past 5 years. Securities Act Release No. 5758 (Nov. 2, 1976) 41 FR 49493 (Nov. 9, 1976).

Final action on these proposals was deferred pending analysis of the record compiled in the instant proceeding. The proposals published today supersede, in some respects, those published in Securities Act Release No. 5758 (Nov. 2, 1976). Specifically, the proposal concerning committee information is superseded by new item 6(d) proposed herein and the proposed amendment to elicit information regarding family relationships is superseded by proposed item 6(a)(6). The balance of the proposals contained in Securities Act Release No. 5758, supra, will be the subject of a separate release in the near future.

rectors, is an appropriate exercise of its rulemaking authority pursuant to section 14(a) of the Securities Exchange Act. Additionally, it is the view of the Commission that the disclosure requirements proposed herein would be conducive to the development of improved accountability mechanisms by issuers to whom the requirements would apply. The Commission agrees with those commentators who stressed the importance of a board of directors that acts as an independent force in corporate affairs, and it believes that the proposals described below would be consistent with the evolution of stronger, more independent boards of directors, better equipped to discharge their fiduciary obligations and to represent the interests of the shareholders who elect them.

1. DISCLOSURE OF BOARD COMPOSITION—PROPOSED ITEM—ITEM 6(A)(6)

In the Commission's view, the interests of shareholders are best served by a board of directors which is able to exercise independent judgment, ask probing questions of management, and bring to the company a broader perspective than that of management. This view is reflected in settlements which have been negotiated in a number of enforcement actions which the Commission has brought,[7] in the audit committee policy of the New York Stock Exchange,[8] and in the conclusions expressed in various private sector studies of the subject of corporate governance.[9] It is also evidenced by the voluntary action taken by many publicly held corporations in recent years to include on their boards persons with diverse backgrounds who are not affiliated with management.

While the Commission recognizes that the presence on the board of all or a majority of independent directors will not, in every case, assure the exercise of independent judgment by the board[10] and that, conversely, boards which include affiliated or management directors in most instances discharge their obligations in a conscientious manner, it believes that board composition is sufficiently important that shareholders whose proxies are solicited with respect to an election of directors should be provided with information concerning the affiliation of board members and nominees with management. Under existing schedule 14A, relating to the content of proxy statements, certain limited information about the affiliations of nominees is required to be disclosed. Item 6(a)(2), for instance, requires disclosure of the principal occupation of the nominee and therefore would elicit information, where applicable, that a nominee is employed by the issuer. Additionally, item 7(f) requires disclosure of certain corporate transactions in which a nominee for election as a director has a material interest. The Commission believes that additional information regarding the affiliations of nominees may be useful to investors in assessing directors' independence from management.

Based on the foregoing, the Commission has determined to publish for comment proposed item 6(a)(6). As proposed, the item would require issuers, other than registered investment companies, to identify each nominee and each director whose term of office as a director will continue after the annual meeting as either a "management director," an "affiliated nonmanagement director," or an "independent director," as these terms are defined in instructions to the item. The item would also require, with respect to an "affiliated non- management director," a brief description of the relationship by reason of which the nominee is deemed to be "affiliated" under the item. The included definitions are provided solely for the purpose of complying with item 6(a)(6) and should not be confused with other similar terms appearing elsewhere in the Federal securities laws. They are intended to distinguish between outside directors who are completely unaffiliated with the issuer and those who have certain business or personal relationships with the issuer. In this regard, it should be noted that the Corporate Directors Guidebook[11] prepared by the American Bar Association employs the terms "unaffiliated non-management director" and "affiliated non-management director" to express this distinction. Comments are specifically requested with respect to the terminology which most clearly expresses this concept.

The instructions to the item contain definitions of the three terms. Paragraph (1) defines the term "management director" as any person who is an officer or employee of the issuer or any of its parents, subsidiaries or other affiliates.[12] Paragraph (2) of the instructions defines the term "affiliated nonmanagement director" as a person having any of the following business or personal relationships with the issuer or its management:

(1) Under paragraph (2)(i), any person who has been within the last 5 years an officer or employee of the corporation or any of its parents, subsidiaries or affiliates;

(2) Under paragraph (2)(ii), any person who has certain defined family relationships by blood, marriage, or adoption to an officer of the corporation, its parents, subsidiaries or affiliates;

(3) Under paragraph (2)(iii), any person who is or has within the last 2 years been an officer, director, employee or owner of an interest in excess of 1 percent of the equity of an entity with certain defined significant business relationships with the issuer. Subparagraphs (A), (B), (D), and (E) refer to an entity which has been, within the last year, or is proposed to be, within the next year, a significant customer of or supplier to the issuer. For purposes of these subparagraphs, the standard of significance for the amount of business done, or to be done, between the entity and the issuer is the lesser of 1 percent of gross revenues for the last fiscal year or $1,000,000. Reference is made in the instructions to payments which are "proposed" during the next fiscal year. Payments which are "proposed" to be made would include payments which are the subject of a formal agreement or are reasonably expected to be made pursuant to any understanding or course of conduct between the issuer and the other entity. Subparagraph (C) would include a significant creditor of the issuer;

(4) Under paragraph (2)(iv), any person who has received within the last year or is proposed to receive within the next year more than $25,000 from the issuer;

(5) Under paragraph (2)(v), any person having a material interest in a transaction which the issuer is required to disclose under item 7(f) of schedule 14A;

(6) Under paragraph (2)(vi), any person who is a member or employee of, or is associated with, a law firm which is proposed to be, or within the last 2 years has been, retained by the corporation. This paragraph would include any partner or owner of an equity interest in the firm as well as associates, other employees, and any person who is of counsel to the firm;

(7) Under paragraph (2)(vii), any director, officer, or employee of an investment banking firm which is pro-

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[7] "SEC v. Brad Ragan, Inc." (W.D. N.C., Dec. 2, 1976) (Consent) (LR-7681, Dec. 2, 1976), "SEC v. Eastern Freight Ways, Inc." (D.D.C., Nov. 19, 1975) (Consent) (LR-7171, Nov. 21, 1975), "SEC v. Emersons, Ltd." (D.D.C., May 11, 1976) (Consent) (LR-7392, May 11, 1976).

[8] See CCH NYSE Guide at paragraph 2495H.

[9] See, e.g., Subcommittee on Functions and Responsibilities of Directors, American Bar Association, Corporate Directors Guidebook, 33 Bus. Law. 1620 (1978);

[10] Cf., "In the Matter of National Telephone Company, Inc." Securities Exchange Act Release No. 14380 (January 16, 1978).

[11] See Corporate Directors Guidebook, supra, 33 Bus. Law. 1620 (1978).

[12] An "affiliate" of a specified person is defined as "a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." Securities Exchange Act Rule 12b-2, 17 CFR 240.12b-2.

posed to perform, or in the last 2 years has performed, services for the corporation; and

(8) Under paragraph (2)(viii), a control person (as defined in rule 12b-2, CFR 240.12b-2) of the issuer other than as a director of the issuer.

The term "independent director" as defined in paragraph (3) of the instructions refers to any person who is neither a "management director" nor an "affiliated nonmanagement director." Paragraph (4) of the instructions makes clear, however, that there may be relationships between the nominee and the issuer and its management which, though not described under paragraph (2), are such that they could be viewed as interfering with such nominee's exercise of independent judgment, and that to refer to such nominee as an "independent director" would be inappropriate.

Proposed item 6(a)(6)(ii) would be applicable to investment companies registered under the Investment Company Act of 1940 and would require that such companies identify which nominees and other persons whose term of office as a director will continue after the annual meeting are "interested persons" as the term is defined in that act. This item would also require, with respect to any person so identified, a brief description of the relationship by reason of which the person is deemed to be an "interested person."

### 2. PROPOSED ITEM 6(D)—DISCLOSURE RELATING TO COMMITTEES OF THE BOARD

Proposed item 6(d)[13] would require disclosure of whether or not the issuer has a standing audit, nominating and compensation committee of the board of directors. Issuers who disclose the existence of a nominating committee also would be required to state whether that committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting recommendations. With respect to all three committees, the issuer would be required to state the number of committee meetings held by each such committee since the date of the most recent annual meeting of shareholders.[14] Identify the committee members and indicate whether they are "management," "affiliated non management" or "independent" directors as those terms are defined in instructions to item 6(a)(6). In this regard, the Commission believes that it is desirable that these three standing committees, which have responsibilities in areas where disinterested oversight is nost needed, normally be composed entirely of persons independent of management.* While the Commission believes that management and persons affiliated with management have valuable expertise and knowledge, it is believed that their input can be effectively provided or obtained in a variety of ways that do not necessitate actual committee membership.

The Commission believes that development of stronger committee systems will enable boards of directors to better serve corporations in an oversight capacity. The Commission endorsed the concept of audit committees as early as 1940 and published a release recommending the establishment of a committee composed of nonofficer members of the board of directors who would be responsible for nominating and arranging the details of the auditor's engagement.[15] Since then, the Commission has issued a number of releases concerning audit committees including, in 1974, an amendment to the proxy rules requiring disclosure of the existence and composition of audit committees.[16] Other entities and professional organizations also have supported the establishment of audit committees and on March 9, 1977, the New York Stock Exchange amended its listing requirements to provide that every listed company must, before June 30, 1978, establish an audit committee comprised solely of nonmanagement directors.[17] Concerns with functions and responsibilities of audit committees have become ever greater as a result of the recent enactment of the Foreign Corrupt Practices Act of 1977.[18]

Similarly, the Commission believes that information relating to nominating committees would be important to shareholders because a nominating committee can, over time, have a significant impact on the composition of the board and also can improve the director selection process by increasing the range of candidates under consideration and intensifying the scrutiny given to their qualifications. Additionally, the Committee believes that the institution of nominating committees can represent a significant step in increasing shareholder participation in the coporate electoral process, a subject which the Commission will consider further in connection with its continuing proxy rule reexamination.

Finally, the Commission believes that disclosure concerning an issuer's compensation committee and its composition would permit investors to better assess the process by which management and director compensation is determined. Although the Commission is aware that compensation committees are less prevalent than audit committees, and that their roles are still evolving, it is the Commission's view, based on its administrative experience, that management compensation is a matter of significant concern to investors. In light of the generally acknowledged importance of these three committees the Commission believes that disclosure concerning the composition of, and number of meetings held by, an issuer's audit, nominating and compensation committee, as contemplated in proposed item 6(d), would provide meaningful information to investors.[20]

Although proposed item 6(d) does not specifically require issuers to discuss the functions of the committees as to which disclosure is required, a note to the item indicates that a statement that the issuer has an audit, nominating or compensation committee connotes that it has a committee that performs the functions customarily performed by such a committee. Customary functions for audit, nominating and compensation committees are set forth in the note. With respect to audit committees, the functions customarily performed would include engaging and discharging the independent auditors (or recommending such actions), directing and supervising special investigations, reviewing with the independent auditors the plan and results of the auditing engagement, reviewing the scope and results of the issuer's procedures for internal auditing, approving each professional service provided by the independent auditors prior to the performance of such service, reviewing the independence of the of the independent auditors, considering the range of audit and non-audit

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[13] A proposed amendment to schedule 14A, also designated item 6(d), which would have required disclosure concerning the existence of a corporate code of conduct was published for comment in Securities Exchange Act Release No. 13185 (Jan. 19, 1977), 46 FR 4854 (Jan. 26, 1977). If the amendments proposed therein are adopted, their designation will be coordinated with the instant proposal, if such proposal is adopted.

[14] A number of similar proposed amendments to schedule 14A were published for comment prior to the institution of the Commission's reexamination of the proxy rules. As noted above, one of these proposals, which would have amended item 6 of schedule 14A to require disclosure concerning memberships on committees of the board, is superseded by proposed item 6(d). See notes 6, infra.

* Commission Karmel disagrees with this statement.

[15] Accounting Series Release No. 19 (Dec. 5, 1940).

[16] Accounting Series Release No. 165 (Dec. 20, 1974).

[17] See, CCH NYSE Guide at paragraph 2495H.

[18] Pub. L. No. 95-213, Tit. I., §§ 102-103 (Dec. 19, 1977).

[20] The Commission's Report of Investigation regarding the activities of the outside directors of National Telephone Co., Inc. underscores the need for disclosure of information which is relevant to an assessment of the adequacy of a company's committee system. Securities Exchange Act Release No. 14380, supra.

fees, and reviewing the adequacy of the issuer's system of internal accounting controls.[21] With respect to nominating committees, customary functions would include selecting (or recommending to the full board) nominees for election as directors and consideration of the performance of incumbent directors in determining whether to nominate them for reelection. The customary functions of compensation committees would include approval (or recommendation to the full board) of the remuneration arrangements for senior management and directors, adoption of compensation plans in which officers and directors are eligible to participate and granting of options or other benefits under any such plans. Finally, the note states that if the issuer has an audit, nominating or compensation committee which does not perform the functions customarily performed by such committees, it should so state and should identify those customary functions which such committee does not perform. The Commission specifically requests that commentators express their views concerning the functions customarily performed by such committees.

[21] The Commission recognizes that the concept of an audit committee, its characteristics, and the functions it ought to perform are currently developing in an evolutionary manner. Accordingly, the note sets forth some, but not all of the functions that the Commission believes should be assumed by an effective audit committee. In its July 5, 1978 "Report to Congress on the Accounting Profession and the Commission's Oversight Role," the Commission stressed the vital importance of an independent audit committee to the proper functioning of the corporation and set forth the following functions which it believes an effective audit committee should be performing: (a) engaging and discharging auditors; (b) reviewing the engagement of the auditors, including the fee, scope and timing of the audit and any other services rendered; (c) reviewing with the auditors and management a company's policies and procedures with respect to internal auditing, accounting and financial controls; (d) reviewing with the independent auditors, upon completion of their audit, their report or opinion, their perception of the company's financial and accounting personnel, the cooperation they received during the audit, the extent to which company resources were and should be used to minimize the time spent on the audit, any significant transactions which are not a normal part of the company's business, any change in accounting principles and practices, all significant proposed adjustments and any recommendations they may have for improving internal accounting controls, choice of accounting principles, or management systems; (e) inquiring concerning deviations from the issuer's code of conduct and periodically reviewing such policies; (f) meeting with the company's financial staff at least twice a year to discuss internal accounting and auditing procedures and the extent to which recommendations made by the internal staff or by the independent auditors have been implemented; and (g) reviewing significant press releases concerning financial matters. See also, *S.E.C.* v. *Killearn Properties, Inc.* (N.D. Fla. May 2, 1977) 221 SRLR D2 (Sept. 28, 1977), for a discussion of the functions and responsibilities of an audit committee.

3. DISCLOSURE RELATING TO BOARD AND COMMITTEE MEETINGS ATTENDED—PROPOSED ITEM 6(E)

Proposed item 6(e) would require disclosure of the total number of meetings of the board of directors held since the date of the most recent annual meeting.[22] In addition, the new item would require that the issuer identify any incumbent director who since that date has attended fewer than 75 percent of the meetings of the board of directors or fewer than 75 percent of the combined total number of meetings held by all committees of the board on which he sits. In this regard, commentators are specifically invited to address whether more meaningful information would be elicited by a requirement to disclose the identity of any incumbent director who since the date of the most recent annual meeting has attended fewer than 75 percent of the aggregate number of meetings of the board of directors and meetings held by all committees on which he sits.

Recognizing that, as greater demands and responsibilities are placed on directors, the time available and the time devoted to corporate affairs by incumbent directors assume greater significance, the Commission had asked for comments and testimony concerning the desirability of requiring disclosure of the time devoted in the previous year by incumbent directors to the issuer's affairs. However, the Commission agrees with the many commentators who suggested that such a requirement would be impractical because a numerical total would be difficult to calculate and also could require substantial additional recordkeeping. Moreover, a bare statement of the amount of time spent on corporate affairs would not convey the substance of a director's contribution to the company.

Many commentators suggested, as an alternative to requiring disclosure of the total time a director has devoted to the affairs of a company, that disclosure of the number of board and committee meetings held and a director's attendance record be required instead. While the Commission believes that, as a general matter, disclosure of attendance records would be of limited usefulness, it has tentatively concluded that disclosure of a director's failure to achieve a certain minimum level of attendance could provide information which would facilitate shareholder assessment of his performance as well as the effectiveness of an issuer's board and committee system generally. In the Commission's view, the approach reflected in proposed item 6(e) would elicit such information in the briefest and least burdensome manner.

[22] Disclosure of the number of meetings held by the issuer's standing audit, nomination, and compensation committees would be required under proposed item 6(d).

4. RESIGNATIONS OF REGISTRANT'S DIRECTORS—ITEM 5 OF FORM 8-K; ITEM 6(F) OF SCHEDULE 14A

Proposed item 5 of form 8-K and proposed item 6(f) of schedule 14A would require that in the event a director resigns or declines to stand for reelection because of a disagreement concerning the issuer's operations, policies, or practices, the issuer must report the disagreement on form 8-K and also describe it in its next proxy statement. A letter from the director stating whether or not he agrees with the description would be filed as an exhibit to the form 8-K. Similarly, prior to filing the preliminary proxy materials with the Commission, the issuer would be required to furnish the director its proposed statement on the matter. If the director disagrees with the issuer's characterization of the disagreement, he would be permitted to include in the proxy statement a brief statement presenting his views, provided he submits his statement to the issuer within 10 business days after receiving the issuer's description of the matter.

The Commission believes that disclosure of director resignations or declinations to stand for reelection is consistent with the increasing emphasis on the monitoring function of corporate boards and would provide useful information to investors in assessing the quality of management. It is also expected that the proposals could enhance the effectiveness of directors by assuring them a forum in which to express differences of opinion on matters that are sufficiently serious to result in termination of the director's association with the issuer. However, disclosure of the reasons underlying a resignation or failure to stand for reelection in the Commission's view would be unnecessary if such action is based on personal reasons. Accordingly, the scope of the proposed items is limited to resignations and declinations to stand for reelection which are based on disagreements as to the issuer's operations, policies or practices. In addition, the Commission believes it is essential that management also have an opportunity to express its views on the matter. Proposed item 6(f) of schedule 14A and proposed new item 5 of form 8-k, therefore, would afford both parties an opportunity to have input in the content of the disclosure.

B. Institutional Voting—Proposed Rule 14a-3(b)(11).

It has been estimated that major institutions held at the end of 1977 more than 33 percent of the total stock outstanding in the United States.[23] Because of the growth of equity security holdings of institutional investors, they are often in a position to influence corporate management through various means, including proxy voting. The role of institutions in the corporate electoral process is, therefore, an important issue in any study of corporate governance.

In recognition of the potential impact of institutional voting on corporate elections and corporate governance, generally, in connection with its proxy rule reexamination, the Commission requested comments and testimony regarding the institutional voting process. Information was sought concerning the procedures employed by institutions in voting proxies, the feasibility of obtaining voting instructions or suggestions from beneficial owners whose shares are held by institutions through pass-through voting or a polling requirement, and the desirability of requiring institutions to disclose their voting practices in annual or other reports.

The response of commentators to these questions indicated that prevailing institutional voting procedures vary greatly. On the one hand, some institutions question the extent of their obligation, as fiduciaries, to vote, particularly on shareholder proposals which may not clearly relate to a portfolio company's short term economic interest or performance. In many instances, institutions vote reflexively for management in accordance with the so-called "Wall Street Rule."[24] On the other hand, a number of institutional investors have begun to question the Wall Street Rule and have adopted formal procedures in order to assure that proposals, including shareholder proposals, are carefully considered.

Despite the concerns expressed by some commentators about the concentrations of voting power which institutions possess, both with respect to securities held for their own accounts and securities held for the account of others, substantially all of the commentators who addressed the issue of the desirability of obtaining the views of persons having an economic interest in the securities being voted, by means of a polling or pass-through voting requirement, were opposed to such a requirement. These persons suggested that such an undertaking, which would entail enormous costs and difficulties, would not be justifiable in view of the fact that those persons with an economic interest in the securities being voted often would have no direct interest in matters affecting a portfolio company and no desire to vote on them. In lieu of a pass-through voting or polling requirement, a number of commentators suggested that it would be appropriate to require institutions to report on their voting procedures, as well as their actual votes on certain issues, particularly shareholder proposals, contested issues and matters affecting the rights or privileges of the holder of the securities to be voted.

The Commission believes that the voting practices and procedures of institutions and the impact of institutional voting on the corporate electoral process are important matters and has authorized its staff to study these issues further in connection with the preparation of its comprehensive report on shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. As a preliminary step toward providing shareholders with better information concerning the exercise of voting power by institutions which are subject to the Commission's proxy rules and facilitating consideration of the impact of institutional voting on corporate governance, the Commission has determined to publish for comment proposed rule 14a-3(b)(11). In this regard, the Commission recognizes that many large institutions, such as banks, insurance companies and pension funds, are not subject to the Commission's proxy rules and therefore would not be affected by the proposed rule. The Commission is also aware that, with respect to some institutions which would be subject to the rule, the class of persons receiving the information provided in annual reports in response to proposed rule 14a-3(b)(11) would not necessarily be the class most impacted by the institutions' voting policies and procedures. Commentators are specifically invited to address these issues.

Proposed rule 14a-3(b)(11) would apply to (a) investment companies registered under the Investment Company Act of 1940; (b) parent holding companies of banks, as defined in section 3(a)(6) of the Securities Exchange Act; (c) parent holding companies of insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940; (d) parent holding companies of brokers or dealers registered under section 15 of the Securities Exchange Act; (e) brokers or dealers registered under section 15 of the Securities Exchange Act; and (f) investment advisers registered under section 203 of the Investment Advisers Act of 1940. It would require such persons to describe briefly in their annual reports to security holders their policies and procedures with respect to the voting of equity securities held by them or their subsidiaries for their own account or the account of others where such persons or their subsidiaries have the power to vote or direct the voting of such securities.

Instruction 1 is intended to clarify that no information need be given in response to the rule with respect to the voting of equity securities which are not of a class registered pursuant to section 12 of the act. In the view of the Commission, information regarding the voting of securities of family corporations and other small companies, as to which no active trading market exists, is of little interest to investors.

Instruction 2 would require affected institutions to indicate whether, with respect to the voting of equity securities held for the account of others, persons having a beneficial or other interest in the securities are consulted concerning how they are voted. If consultation procedures exist, they would be required to be described. The Commission believes that such information would be of use to investors in assessing the voting policies and procedures of affected institutions.

Instruction 3 would require a description of any formal procedures for considering "contested matters" or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, such as mergers, acquisitions, disposals of a significant amount of assets and adoption of compensation plans requiring the approval of shareholders. Any existing policy with respect to how securities are voted on such matters also would be required to be described. Thus, an institution which, as a matter of policy, generally votes in favor of management on contested matters or in the alternative sells its securities would be required to so state. The Commission is of the opinion that this information is essential to an informed assessment of the quality of the procedures utilized by institutions in the voting of equity securities held for their own accounts and the accounts of others, and also is indicative of the degree to which the governance of portfolio companies may be affected by institutional voting. Instruction 3 also would require institutions to disclose, in the aggregate, the number of times contested matters and matters substantially affecting the rights of shareholders were presented and the number of times the securities were voted for and

[23] 37 SEC Statistical Bulletin 6 (June 1978).

[24] As defined by many commentators in this proceeding, the "Wall Street Rule" refers to a practice followed by some investors of voting the shares they hold in support of management's recommendation unless they are sufficiently dissatisfied with management's performance to dispose of their investment.

against the recommendations made by managements of the companies whose equity securities were voted. Additionally, institutions would be required to state the number of times they abstained from voting on such matters. In this regard, the Commission specifically requests comments as to whether such a requirement would impose any additional costs or recordkeeping burdens on affected institutions.

Instruction 4 would define the term "contested matter" to be any matter which is the subject of a counter-solicitation or which is part of a shareholder proposal opposed by management.

C. SHAREHOLDER-PROPONENT CONSIDERATION OF MANAGEMENT'S STATEMENT IN OPPOSITION TO A SHAREHOLDER PROPOSAL—PROPOSAL RULE 14a-8(e)[25]

Proposed rule 14a-8(e) would require that the issuer forward to a shareholder-proponent, not later than 10 business days before its preliminary proxy materials are filed with the Commission, a copy of any statement in opposition to the proponent's resolution that management intends to include in the corporate proxy statement. During the hearings, a number of witnesses opined that under the present system, which does not afford a proponent an opportunity to review management's statement in opposition until he receives the proxy materials in the mail, a proponent does not have a practical means of curing any misstatements which are made in the discussion of his proposal. Proposed rule 14a-8(e) is intended to provide a shareholder-proponent an opportunity to bring potentially false or misleading statements contained in opposing statements to the attention of management or the Commission before the proxy materials are mailed to shareholders. Currently, management has an opportunity to review a shareholder proposal and supporting statement, and also may, pursuant to rule 14a-8(d), 17 CFR 240.14a-8(d), omit from the proxy materials any statements that are false or misleading in violation of rule 14a-9, 17 CFR 240.14a-9.[26] Proposed rule 14a-8(e) would, by providing shareholder-proponents with a similar opportunity to object to false or misleading material in management's opposing statement before the proxy statement is mailed to shareholders, help to assure that shareholders vote on proposals without being misled by one party or the other.

The Commission recognizes that a shareholder-proponent may be in the best position to examine the opposing statement because he ordinarily would have sufficient knowledge of the facts and circumstances surronding the subject matter of the proposal to detect possible misstatements or omissions. Additionally, in view of the large numbers of proxy statements filed with the Commission each year, the Commission's role in detecting inaccuracies in the opposing statement must necessarily be somewhat limited.

Procedurally, it is contemplated that if a shareholder-proponent chooses to contact the Commission with his objections, the staff would then consider his comments in connection with its review of the issuer's proxy materials. In this regard, it is important to note that proposed rule 14a-8(e) is intended to elicit a proponent's views only to the extent that these views relate to misstatements or omissions of a factual nature; the rule is not intended to provide a forum for further debate on the issue which is the subject of the proponent's resolution.

The Commission recognizes that proxy season can impose severe timing exigencies on issuers. However, it does not believe that proposed rule 14a-8(e) would cause issuers any additional timing problems. Issuers generally will know no later than 20 days before filing their preliminary proxy materials whether a shareholder will be included[27] and therefore would have at least 10 days to draft and mail to a shareholder-proponent any statement in opposition which it intends to include in the proxy materials. Any appropriate revisions which result from a proponent's views on the statement could be made by the issuer in conjunction with other revisions made during the normal period of comment.

D. DISCLOSURE OF TERMS OF SETTLEMENT OF ELECTION CONTESTS—ITEM 3(b)(5) OF SCHEDULE 14A; ITEM 7(d) OF FORM 10Q

In its releases, the Commission asked for comments concerning what additional disclosures, if any, should be required with respect to the financing of proxy solicitations or election contests, including settlements of election contests. Commentators did not address the question of the necessity for additional disclosure relating strictly to the financing of proxy contests, and only a few commentators directly discussed the question of disclosure concerning election contest settlement terms. However, based on its experience in administering the proxy rules, the Commission is concerned that some contest settlement arrangements may reflect management interests only and may not, in fact, be in the best interests of shareholders. The Commission therefore believes that a description of the terms of election contest settlements, as contemplated by proposed item 3(b)(5), could provide shareholders with important information which would be useful in making their voting decisions.

In this regard, it should be noted that the Commission does not intend that issuers be required to file an amended proxy statement solely to disclose the terms of the settlement, if such amended proxy statement is not otherwise necessary, for example, because management's nominees have changed. In such cases, the settlement should be disclosed in the issuer's proxy statement for the next annual meeting of shareholders unless it has previously been disclosed in documents which have been filed with the Commission and disseminated to shareholders. Additionally, the terms of settlement would be required to be disclosed in the subsequent quarterly report on form 10-Q pursuant to paragraph (d) of item 7 of form 10-Q. If the settlement has already been disclosed in a filing with the Commission, proposed instruction 5 indicates that paragraph (d) of item 7 may be answered by reference to the information contained in such other filings.

III. TEXT OF PROPOSED AMENDMENTS

I. § 240.14a-3 is proposed to be amended to read as follows:

**§ 240.14a-3 Information to be furnished to security holders.**

* * * * * *

(b) * * *

(11) The annual report to security holders of any of the following persons shall briefly describe any policies and procedures with respect to the voting of equity securities held by such person or any of its subsidiaries for its own account or the account of others, where such person or any of its subsidiaries has the power to vote, or direct the voting of such securities.

(i) An investment company registered under the Investment Company Act of 1940;

(ii) A parent holding company of a bank as defined in section 3(a)(6) of the act;

(iii) A parent holding company of an insurance company as defined in sec-

[25] It should be noted that, as indicated above, the Commission will consider the staff's additional recommendations relating to rule 14a-8 following consideration of the proposals contained herein.

[26] See rule 14a-8(c)(3), 17 CFR 240.14a-8(c)(3).

[27] The Commission's records indicate that of all the shareholder proposals received by issuers, approximately 50 percent are included in the proxy materials without utilization of the staff's no-action procedures. Where includability is contested, in order to take advantage of the staff's no-action procedures, an issuer must file its objections with the Commission at least 50 days prior to filing its preliminary proxy materials (rule 14a-8(d)). As a general rule, the staff's no-action position is communicated to the issuer and proponent within 30 days of receipt of the issuer's objections.

tion 2(a)(17) of the Investment Company Act of 1940;

(iv) A parent holding company of a broker or dealer registered under section 15 of the act;

(v) A broker or dealer registered under section 15 of the act; and

(vi) An investment adviser registered under section 203 of the Investment Advisers Act of 1940.

*Instructions.* 1. No information need be given in response to this paragraph with respect to the voting of equity securities which are not of a class registered pursuant to section 12 of the act.

2. With respect to the voting of equity securities held for the account of others, indicate whether persons having a beneficial or other interest in the securities are consulted concerning how they are voted. If so, describe the method of consultation.

3. Describe any formal procedures for consideration of contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. Describe any policies with respect to how securities are voted on such matters. If any such matters were presented during the past year, indicate in the aggregate the number of times such matters were presented and the number of times the securities were voted for and against the recommendations made by managements of the entities whose securities were voted. Also indicate the number of times the securities were voted to abstain on such matters.

4. For purposes of this rule 14a-3(b)(11), the term "contested matter" refers to a matter which is the subject of a counter-solicitation or is part of a proposal made by a shareholder which is being opposed by management.

(12) Paragraphs (b)(4) through (b)(10) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(3) of this section, the annual report to security holders of such investment company may be in any form deemed suitable by management.

(13) This paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited, at least 20 days before the date of the meeting.

* * * * *

II. Section 240.14a-8 is proposed to be amended to read as follows:

**§ 240.14a-8 Proposals of security holders.**

* * * * *

(e) If the management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than 10-business days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to rule 14a-6(a), forward to the proponent a copy of the statement in opposition to the proposal.

III. Section 240.14a-101 is proposed to be amended to read as follows:

**§ 240.14a-101 Schedule 14A. Information required in proxy statement.**

* * * * *

*Item 3. Persons Making the Solicitation.*

* * * * *

(b) * * *

(6) If any such solicitation is terminated pursuant to a settlement between the issuer and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the issuer.

*Instructions.* 1. With respect to solicitations subject to § 240.14a-11 (rule X-14A-11), costs and expenditures within the meaning of this item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the issuer may exclude the amounts of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (5) of item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the issuer subsequent to the date of settlement.

* * * * *

*Item 6. Nominees and directors.* (a) * * *

(6)(i) Applicable to issuers other than an investment company registered under the Investment Company Act of 1940.

State whether he is or would be an independent director, an affiliated nonmanagement director, or a management director. If he is or would be an affiliated nonmanagement director, briefly describe the relationship by reason of which he is so deemed.

*Instruction.* For purposes of this item 6(a)(6) the terms "management director," "affiliated nonmanagement director," and "independent director" are defined as follows:

(1) The term "management director" refers to any person who is an officer or employee of the issuer or any of its parents, subsidiaries, or other affiliates.

(2) The term "affiliated nonmanagement director" refers to any person who:

(i) Has in the last 5 years been an officer or employee of the issuer or any of its parents, subsidiaries, or other affiliates;

(ii) Is related to an officer of the issuer, or any of its parents, subsidiaries, or other affiliates by blood, marriage, or adoption (except relationships more remote than first cousin);

(iii) Is, or has within the last 2 years been, an officer, director, or employee of, or owns, or has within the last 2 years owned, directly or indirectly, in excess of 1 percent of the equity of, any firm, corporation, or other business or professional entity:

(A) Which has made payments to the issuer for property or services during the issuer's last fiscal year in excess of 1 percent of the issuer's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(B) Which proposes to make payments to the issuer for property or services during the next fiscal year in excess of 1 percent of the issuer's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(C) To which the issuer was indebted at any time during the issuer's last fiscal year in an aggregate amount in excess of 1 percent of the issuer's total assets at the end of such fiscal year or $1,000,000, whichever is less;

(D) To which the issuer has made payments for property or services during such entity's last fiscal year in excess of 1 percent of such entity's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(E) To which the issuer proposes to make payments for property or services during such entity's next fiscal year in excess of 1 percent of such entity's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(F) In order to determine whether payments made or proposed to be made exceed 1 percent of the gross revenues of any entity other than the issuer for such entity's last fiscal year, the issuer may rely on information provided by the nominee or director;

(iv) Is a person (as owner of an equity interest in any entity or otherwise):

(A) To whom the issuer has made payments, directly or indirectly, during the issuer's last fiscal year, for property or services, in excess of $25,000 (other than fees as a director or retirement allowances); or

(B) To whom the issuer proposes to make payments, directly or indirectly, during the issuer's next fiscal year for property or services, in excess of $25,000 (other than fees as a director or retirement allowances);

(v) Is a person having a direct or indirect material interest, within the meaning of item 7(f), in any transaction required to be described in response to item 7(f);

(vi) Is a member or employee of, or is associated with, a law firm which the issuer has retained in the last 2 years or proposes to retain in the next year;

(vii) Is a director, partner, officer, or employee of any investment banking firm which has performed services for the issuer in the last 2 years or which the issuer proposes to have perform services in the next year; or

(viii) Is a control person of the issuer (other than as a director of the issuer).

(3) The term "independent director" means any person who is not included in paragraphs (1) and (2) above.

(4) Notwithstanding the definition of "independent director" in paragraph (3), above, if the issuer is aware of other relationships between the nominee and the issuer or its affiliates which, under the circumstances, reasonably could be viewed as interfering with such nominee's exercise of independent judgment, reference to such nominee as an "independent director" would be inappropriate.

(ii) Applicable to investment companies registered under the Investment Company Act of 1940.

State whether he is or would be an "interested person" of the issuer as that term is defined in section 2(a)(19) of the Investment Company Act of 1940, and briefly describe the relationship by reason of which such person is deemed an "interested person."

* * * * *

(d) State whether or not the issuer has standing audit, nominating, and compensation committees of the Board of Directors. If the issuer has such committees, identify each committee member and indicate whether he is a "management director," affiliated nonmanagement director," or "independent director," as defined in the instructions to item 6(a)(6), and state the number of committee meetings held by each such committee since the date of the most recent annual meeting of shareholders.

If the issuer has a nominating committee, state whether the nominating committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

NOTE.—In the Commission's view, the statement that an issurer has an audit, nominating, or compensation committee connotes that it has committees which perform the functions customarily performed by such committees. If the issuer has an audit, nominating, or compensation committee which does not perform the functions customarily performed by such committees, it should so state and describe which customary functions such committee does not perform.

Audit, nominating, and compensation committees customarily perform certain functions, including the following:

(1) With respect to audit committees, engagement or discharge (or recommendation to the full board of the engagement or discharge) of the independent auditors, direction and supervision of investigations into matters within the scope of its duties, review with the independent auditors of the plan and results of the auditing engagement, review of the scope and results of the issuer's internal auditing procedures, approval of each professional service provided by the independent auditors prior to the performance of such services, review of the independence of the independent auditors, consideration of the range of audit and nonaudit fees, and review of the adequacy of the issuer's system of internal accounting controls;

(2) With respect to nominating committees, selection (or recommendation to the full board) of nominees for election as directors and consideration of the performance of incumbent directors in determining whether to nominate them to stand for reelection;

(3) With respect to compensation committees, approval (or recommendation to the full board) of the remuneration arrangements for senior management and directors, adoption of compensation plans in which officers and directors are eligible to participate and granting options or other benefits under any such plans.

(e) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which have been held since the date of the most recent annual meeting of shareholders.

(1) Name each incumbent director who since the date of the most recent annual meeting of shareholder has attended fewer than 75 percent of the toal number of meetings of the board of directors held during the period for which he has been a director.

(2) Name each incumbent director who since the date of the most recent annual meeting of shareholders has attended fewer the 75 percent of the total number of meetings held by all committees of the board of directors of which he has been a member during the periods for which he has been a member.

(f) If a director has resigned or declined to stand for reelection to the board since the date of the most recent annual meeting of shareholders, and if, in connection with such resignation or declination to stand for reelection, a disagreement has been reported or is required to be reported on form 8-K, at least 20 business days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to rule 14a-6(a) the issuer shall furnish the description of the disagreement to the director with whom a disagreement has been or is required to be reported. If the director believes that the description of the disagreement is incorrect or incomplete, he may include in the proxy statement a brief statement, ordinarily not expected to exceed 200 words, relating to the description of the disagreement and presenting his view of the disagreement. In order to have such statement included in the proxy statement, it shall be submitted to the issuer within 10 days of the date the director receives the issuer's description.

* * * * *

IV. § 249.308 is proposed to be amended to read as follows:

**§ 249.308 Form 8-K, for current reports.**

GENERAL INSTRUCTIONS

A. * * *

B. Events to be reported and filing of reports. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to item 6 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountants to be furnished pursuant to item 4(d) is unavailable at the time of filing, it shall be filed within 30 days thereafter. If the letter from the director to be furnished pursuant to item 5 is unavailable at the time of filing, it shall be filed as soon as reasonably possible after it has been received by the registrant. Moreover, if substantially the same information as that required by this form has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in rule 12b-2.

* * * * *

*Item 5. Resignations of registrant's directors.* If a director has resigned or declined to stand for reelection to the board since the date of the most recent annual meeting of shareholders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies, or practices, the registrant shall state the date of such resignation or declination to stand for reelection and describe the disagreement.

The registrant shall request the director to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and any respects in which he does not agree. The registrant shall file a copy of the director's letter as an exhibit with all copies of the form 8-K required to be filed pursuant to general instruction E.

*Item 6. Other materially important events.* [No change from present item 5.]

*Item 7. Financial statements and exhibits.* [No change from present items 6 except to add paragraph (b)(3) as follows:]

3. Letters from directors furnished pursuant to item 5.

V. § 249.308a is proposed to be amended to read as follows:

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

* * * * *

*Item 7. Submission of matters to a vote of security holders.*

* * * * *

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in rule 14a-11 of regulation 14A under the act) terminating any solicitation subject to rule 14a-11, including the cost or anticipated cost to the registrant.

*Instructions.* 5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

5. [No change from current instruction 5.]

* * * * *

*Item 9. Exhibits and reports on form 8-K.*

(a) * * *

4. Copies of any published report furnished in reponse to item 7. (See item 7, instruction 6.)

(Secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3-5, 84 Stat. 1435, 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; sec. 204, 91 Stat. 1500; 15 U.S.C. 781, 78m, 78n, 780(d), 78w(a).)

IV. OPERATION OF PROPOSALS

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the

adoption of the proposals published herein.

Pusuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact that these proposals would have on competition and is not aware, at this time, of any burden that such rules, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of the act. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

The Commission hereby proposes for comment amendments to forms 8-K (17 CFR 249.308) and 10-Q (17 CFR 249.308a), schedule 14A (17 CFR 240.14a-1 et seq.) and regulation 14A (17 CFR 250.14a-101) pursuant to sections 12, 13, 14, 15(d), and 23(a) of the Securities Exchange Act.

The Commission will endeavor to review the comments on these proposals and take such actions as may appear necessary to have the amended disclosure requirements adopted in time for compliance by issuers in the 1979 proxy season. Accordingly, the Commission would not wish to extend the comment period beyond the date originally fixed.

All interested persons are invited to submit their views and comments on the foregoing proposals in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before September 18, 1978. Such communications should refer to file S7-747 and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
*Secretary.*

JULY 18, 1978.

[FR Doc. 78-20427 Filed 7-21-78; 8:45 am]

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[4210-01]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Federal Insurance Administration

### [24 CFR Part 1917]

[Docket No. FI-2633]

### NATIONAL FLOOD INSURANCE PROGRAM

### Final Flood Elevation Determinations for the Borough of Glorham Park, Morris County, N.J.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: The Federal Insurance Administration has erroneously published at 42 FR 22355 on May 25, 1978, the flood elevation determination for the Borough of Florham Park, Morris County, N.J. This notice will serve as a cancellation of that publication. A new notice of final flood elevation determination will be published in the near future.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719).

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 78-20076 Filed 7-21-78; 8:45 am]

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[4310-05]

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### [30 CFR Chapter VII]

### SURFACE COAL MINING AND RECLAMATION OPERATIONS

### Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Release of draft regulations relating to the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

SUMMARY: OSM has previously published two notices in the FEDERAL REGISTER concerning public participation in the preparation of rules for the permanent regulatory program and the availability of preproposed rulemaking draft rules for this program. (43 FR 25881, June 15, 1978; 43 FR 29012-29013, July 5, 1978.) This public notice announces the availability of preproposed draft rules which, when promulgated as final rules, will be included in Chapter VII of Title 30, Code of Federal Regulations.

DATES: Drafts of these regulations are being made available to the public beginning on Friday, July 21, 1978, in OSM's Headquarters in Washington, D.C. and its five regional offices. As announced in the two earlier FEDERAL REGISTER notices on this subject, public meetings on these draft rules will be held in Washington, D.C. on August 3 and 4, 1978, in Knoxville, Tenn. on August 7, 1978, in Charleston, W. Va. on August 8, 1978, in Indianapolis, Ind. on August 9, 1978, in Kansas City, Mo. on August 10, 1978, and in Denver, Colo. on August 11, 1978. The locations of the hearings were announced in the two previously published notices (43 FR 25881, June 15, 1978; 43 FR 29012, July 5, 1978). Written comments on the draft rules will be accepted for consideration for purposes of the proposed rules if received by OSM on or before August 18, 1978.

ADDRESSES: Drafts of these regulations are available at the following Surface Mining offices:

OSM Headquarters, Department of the Interior, Room 6229, 18th and C Streets NW., Washington, D.C. 20240.

OSM, Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard East, Charleston, W. Va. 25301.

OSM, Region II, Northshore Building 2, Sixth Floor, 1111 North Shore Drive, Knoxville, Tenn. 37902.

OSM, Region III, Federal Building and Courthouse, Ohio and Pennsylvania Streets, Indianapolis, Ind. 46205.

OSM, Region IV, 601 East 12th Street, Room 1768, Kansas City, Mo. 64116.

OSM, Region V, Old Post Office Downtown, 1823 Stout Street, Denver, Colo. 80202.

Send written comments on these draft rules to:

Department of the Interior, Room 6229, 18th and C Streets, NW., Washington, D.C. 20240.

These comments and a list of public meetings with OSM staff will be available for viewing at the Washington, D.C. office from 9 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

Patricia Foulk, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4719.

SUPPLEMENTARY INFORMATION: As noted in the June 15, 1978 FEDERAL REGISTER notice, OSM is making available drafts of the permanent program regulations prior to proposed rulemaking in order to fulfill the spirit of the SMCRA and Executive Order 12044, both of which call for early and meaningful public participation in the development of agency regulations. The draft regulations being made available at this time are not intended to reflect the final position of OSM or the Department on the content of these regulations. The content of these regulations is based in part upon the Office's review to date of available technical literature and other source material, including the legislative history of the act. Review of this materi-

al is not necessarily complete at this time and further examination may suggest alternative provisions to those contained in the present drafts. Likewise, comments elicited by these drafts will be carefully reviewed and may well suggest alternative provisions.

All drafts of the permanent program regulations being released at this time are subject to the following qualifications:

This document is a draft of proposed regulations and is not a completed version of proposed regulations. OSM is making this draft available to Federal and State agencies and the public generally to meet the goals of Executive Order No. 12044 and section 102(i) of the SMCRA and for the purpose of providing early public participation in the development of the permanent regulatory program. The regulations as contained in this draft are subject to change, based upon consideration of public comments, additional analyses and information, and further review by the Office. Following such consideration, the Office intends to publish proposed regulations for comment in the FEDERAL REGISTER. These draft regulations in no way affect the validity or finality of existing final regulations promulgated under the act, which the Office intends to enforce fully.

The rules to implement the permanent regulatory program will be included within Chapter VII of Title 30 Code of Federal Regulations. As currently contemplated that Chapter will be composed of 13 subchapters as follows: Subchapter A, General; Subchapter B, Interim Program Regulations; Subchapter C, Permanent Regulatory Programs in States; Subchapter D, Regulatory Program for Federal Lands; Subchapter F, Areas Unsuitable for Mining; Subchapter G, Permits for Surface Coal Mining Operations; Subchapter J, Performance Bonds for Surface Coal Mining Operations; Subchapter K, Permanent Program Performance Standards; Subchapter L, Permanent Program Inspection and Enforcement; Subchapter M, Certification and Training of Blasters; Subchapter P, Protection of Employees; Subchapter R, Abandoned Mine Land Reclamation; and Subchapter S, Mining and Mineral Research Institutes.

Regulations under some of these subchapters are already in effect. Others are in various stages of rulemaking independent of that being followed for the regulations which fall within the permanent regulatory program. Not included in the rulemaking to which this notice applies are the following:

Subchapter B—Parts 710, 715, 716, 717, 718, 720, 721, 722, 723, and 725. Status: Final rules, December 13, 1977.

Subchapter P—Part 830 (which will be renumbered as Part 865). Status: Final rules, December 13, 1977.

Subchapter R—Part 837 (which will be renumbered as Part 870). Status: Final rules, December 13, 1977.

Parts 840, 841, 843, 845, 848, 850, 852, and 855. Status: Proposed April 26, 1978, 43 FR 17918-17933.

Subchapter S—Part 880 (which will be renumbered as Part 890). Status: Proposed June 5, 1978, 43 FR 24326.

Included with the draft regulations being made available at this time are Parts previously released on July 3, 1978. Released on July 3, 1978 were State Programs—Part 730, State Designation of Areas Unsuitable for Surface Coal Mining Operations—Part 735, Coal Exploration Operations—Part 781, State Regulatory Authority Inspection and Enforcement—Part 820, Federal Inspection and Enforcement—Part 822, and Civil Penalties—Part 823. Those Parts are being released again at this time. All those Parts have been renumbered since their release on July 3, 1978, and organizational and substantive changes have also been made. Those Parts in their current form may now be found as follows: State Programs—Subchapter C, State Designations of Areas Unsuitable for Surface Coal Mining Operations—Subchapter F, Coal Exploration Operations—Part 776 of Subchapter G, State Inspection and Enforcement—Part 840 of Subchapter L, Federal Inspections and Enforcement—now in Parts 842 and 843 of Subchapter L, and Civil Penalties—in Part 845 of Subchapter L.

The most useful comments will be those which contain positive suggestions for alternative language for the regulations. References to technical literature, the act, legislative history and other source material, supporting comments and suggested alternative language are solicited and would be appreciated. Purely negative comments objecting to provisions in these drafts without suggesting alternatives and alternative recommendations without supporting rationale or source material will be of little value in the subsequent review to be undertaken by OSM.

Certain sections of these drafts indicate words or phrases to be defined but for which no definition is given at this time. Attention to these words or phrases and suggested language for definitions would be appreciated.

Constructive suggestions and alternatives to these draft regulations submitted during this preliminary public comment period will be carefully evaluated by OSM prior to publishing proposed rules in the FEDERAL REGISTER for the formal comment period. A public hearing will be held on all the permanent program regulations during that formal public comment period.

The regulations being distributed at this time in draft form may contain provisions which are different from corresponding sections of the initial program regulations in effect at this time. These differences are not intended in any way to affect the validity and finality of the initial program regulations. Public comment on these differences will be helpful in ultimately making final determinations whether provisions in the intitial regulatory program merit amendment. Prior to formal amendment of those initial program regulations, OSM will fully enforce the initial program regulations and expects the State regulatory authorities to do the same.

Dated: July 20, 1978.

TONEY HEAD, Jr.,
*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 78-20597 Filed 7-21-78; 8:45 am]

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[3710-92]

## DEPARTMENT OF DEFENSE

### Corps of Engineers

[33 CFR Part 207]

### COOPER RIVER AND TRIBUTARIES, SOUTH CAROLINA; RESTRICTED AREAS

### Navigation Regulations

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

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend the regulations which establish a restricted area in the Cooper River, S.C. The proposed amendment, if established, will enlarge the restricted area in the vicinity of the Charleston Naval Shipyard thereby providing more effective security for that facility.

DATE: Comments must be received on or before August 18, 1978.

ADDRESS: Send comments to: Office of the Chief of Engineers, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph Eppard, 202-693-5070.

SUPPLEMENTARY INFORMATION: Regulations promulgated in 33 CFR Part 207.164b establish restricted areas in the Cooper River and its tributaries at Charleston, S.C. The Commandant, Sixth Naval District, Charleston, S.C., has requested authorization to establish a new restricted area in the Cooper River located between the shipyard and Daniel Island, Charleston County, S.C., which will enlarge the existing restricted areas. Vessels entering the restricted area would not be allowed to anchor,

fish, or loiter in any way until clear of the restricted area. Accordingly, we propose to amend 33 CFR 207.164b as set forth below:

**§ 207.164b Cooper River and tributaries at Charleston, S.C.; restricted areas.**

(a) The areas. (1) That portion of Cooper River beginning on the westerly shore at latitude 32°49'50", longitude 79°56'10"; thence to latitude 32°49'54", longitude 79°55'55"; thence to latitude 32°50'32", longitude 79°55'55"; thence to latitude 32°51'01", longitude 79°56'07"; thence to latitude 32°51'19", longitude 79°57'05"; thence to latitude 32°51'33", longitude 79°57'27"; thence to latitude 32°51'48.5"; longitude 79°57'41.5"; thence to latitude 32°52'06", longitude 79°57'54"; thence to latitude 32°52'27", longitude 79°58'01"; thence to latitude 32°52'37", longitude 79°58'03"; and thence to the westerly shore at latitude 32°52'37", longitude 79°58'06".

(2) The reach of Shipyard Creek upstream from a line 300 feet from and parallel to the upstream limit of the improved Federal turning basin.

(3) That portion of the Cooper River beginning on the west channel edge at latitude 32°52'06", longitude 79°57'54"; thence to the easterly shore of the Cooper River at latitude 32°52'13", longitude 79°57'30"; thence proceeding along the easterly shore to latitude 32°51'37", longitude 79°56'38"; thence to latitude 32°51'19", longitude 79°57'05"; thence to latitude 32°51'33", longitude 79°57'27"; thence to latitude 32°51'48.5", longitude 79°57'41.5"; thence to latitude 32°52'06", longitude 79°57'54".

(4) That portion of Cooper River extending from the mouth of Goose Creek at Red Bank Landing, a distance of approximately 4.8 miles and the tributaries to Cooper River within the area inclosed by the following arcs and their intersections:

(1) Radius = 8255' center of radius latitude 32°55'45" N, longitude 79°45'23" W

(2) Radius = 3790' center of radius latitude 32°55'00" N, longitude 79°55'41" W

(3) Radius = 8255' center of radius latitude 32°55'41" N, longitude 79°56'15" W

(4) Radius = 8255' center of radius latitude 32°56'09" N, longitude 79°56'19" W

(b) The regulations. (1) Unauthorized vessels and other watercraft shall not enter at any time the restricted areas described in paragraph (a) (1) and (2) of this section.

(2) Vessels and other watercraft entering the restricted area described in paragraph (a)(3) of this section shall proceed at normal speed and under no circumstances anchor, fish, loiter, or photograph until clear of the restricted area.

(3) Vessels other than those authorized by the Commanding Officer, Naval Ammunition Depot, entering the restricted area described in paragraph (a)(4) of this section shall proceed at normal speed and under no circumstances anchor, fish, or loiter in any way until clear of the restricted area. The area will be marked with suitable warning signs.

(4) The regulation in subparagraphs (1) and (2) of this paragraph shall be enforced by the Commanding Officer, Southeastern Division, Naval Facilities Engineering Command, U.S. Naval Base, Charleston, South Carolina, and such agencies as he may designate.

(5) The regulation in subparagraph (3) of this paragraph shall be enforced by the Commanding Officer, Naval Ammunition Depot, Charleston, S.C., and such agencies as he may designate.

AUTHORITY: 40 Stat. 266; 33 U.S.C. 1.

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: July 7, 1978.

THOMAS J. WOODALL,
*Lieutenant Colonel, CE Acting Executive Director, Engineer Staff.*

[FR Doc. 78-20410 Filed 7-21-78; 8:45 am]

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[6560-01]

## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 930-8]

### STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

**Proposed Approval of an Administrative Order Issued By Department of Conservation and Natural Resources, State of Nevada To Southern California Edison Co.**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the State of Nevada, Department of Conservation and Natural Resources, to Southern California Edison Co. The order requires the company to bring air emissions from its Units No. 1 and No. 2 in Laughlin, NV into compliance with certain regulations contained in the federally approved Nevada State Implementation Plan (SIP) within 90 days of commencing operation of Unit No. 1. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before August 23, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Charles M. Seeley, 215 Fremont Street, San Francisco, CA 94105, 415-556-0970.

SUPPLEMENTARY INFORMATION: The Southern California Edison Co. operates an electric generating station (Mohave Generating station) at Laughlin, Nev. The order under consideration addresses emissions from both Units No. 1 and No. 2 at the facility, which are subject to article 7.1.1.2 of the Nevada Air Quality Regulations. Unit No. 1 was found by the Department of Conservation and Natural Resources to be operating in violation of article 7.1.1.2. The regulation limits the emissions of particulate matter and is part of the federally approved Nevada State Implementation Plan. The order requires final compliance with the regulation through repair and/or reconstruction of unit No. 1 electrostatic precipitator, within 90 days following commencement of unit No. 1 operation. In a letter dated April 11, 1978 transmitting the order to EPA the State has advised that the source has completed three of the four increments required by the order, namely:

1. February 1, 1978—Unit No. 1 shall cease operation to commence repair and/or reconstruction on unit No. 1 electrostatic precipitator north and south sections.

2. April 1, 1978—Repair and-or reconstruction on unit No. 1 electrostatic precipitator north and south section shall be completed.

3. April 1, 1978—Submit a source test plan for particulate matter emission tests on unit No. 1 and unit No. 2 to the Director, Department of Conservation and Natural Resources.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

EPA has reviewed the order and found that all elements of the appropriate paragraphs of subsection 113(d) were met.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Nevada SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: June 28, 1978.

PAUL DE FALCO, JR.,
*Regional Administrator*
*Region IX.*

ORDER

The following order is issued this date pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (hereinafter referred to as the "Act"), and Chapter 445 of the Nevada Revised Statutes (hereinafter referred to as "NRS").

On October 14, 1977, the Director, Department of Conservation and Natural Resources found that the Southern California Edison Co.'s Mohave Generating Station Unit No. 1 located near Laughlin, Nev., was in violation of Article 7.1.1.2 of the Nevada Air Quality Regulations (hereinafter referred to as "NAQR"), in that:

Particulate matter emissions from unit No. 1 of the Southern California Edison's Mohave Generating Station were in excess of the allowable limits specified in Article 7.1.1.2 of the NAQR.

Pursuant to section 113(a)(4) of the act and sections 456, 473, 497, and 526 of NRS Chapter 445, opportunity to confer with representatives of the Nevada Department of Conservation and Natural Resources was given to Southern California Edison Co. and on November 17, 1977, a conference to discuss said violation was held at the offices of the Department of Conservation and Natural Resources.

The following events have occurred relating to the Department of Conservation and Natural Resources and Southern California Edison's Mohave Generating Station:

1. May 20, 1975—Assembly bill No. 708 was approved, after legislative hearings, which placed a moratorium on enforcing existing compliance plans, variance orders or other enforcement action relating to air pollution for fossil fuel-fired steam generating facilities greater than 1,000 megawatts until after July 1, 1977.

2. September 19, 1975—The State Environmental Commission amended the State Implementation Plan (SIP) to accept the responsibility for the regulation of 1,000 megawatt power plants throughout the State until July 1, 1977, and granted a variance from the emission standard, now a part of the SIP.

3. September 16, 1976—The State Environmental Commission approved a variance request of Southern California Edison from particulate matter emissions (article 7) of the Nevada Air Quality Regulatons (NAQR). A variance was not considered for sulfur emission (article 8), since the sulfur emission did not violate State standards. No action disapproving or approving the SIP had been published by the United States Environmental Protection Agency (EPA) in the FEDERAL REGISTER at that time.

4. December 8, 1976—Notice of Violation issued by EPA for violation of particulate mass emission rate as specified in Section 26 of the Air Pollution Control Regulations of the District Board of Health of Clark County, Nev. a regulation which was no longer a part of the State approved SIP.

5. January 13, 1977—EPA found variance of September 16, 1976, unapprovable, but failed to publish disapproval in the FEDERAL REGISTER as a rulemaking action.

6. January 20, 1977—Senate bill No. 106 introduced by the 59th session of the Nevada Legislature removed enforcement authority from local jurisdiction and placed enforcement authority under State jurisdiction of fossil fuel-fired electric steam generating facilities, which would be legislative amendment to the SIP.

7. January 21, 1977—An EPA conference was held on Notice of Violation issued December 8, 1976 in Las Vegas.

8. March 4, 1977—EPA orders particulate emission tests for units 1 and 2 at Mohave Generating Station.

9. April 7, 1977—A meeting was held at EPA, region IX, offices to discuss procedures for compliance source tests order March 4, 1977.

10. May 3-10, 1977—Source test conducted on units 1 and 2 at Mohave Generating Station.

11. May 18, 1977—Senate bill No. 106 approved, after legislative hearings, to be effective July 1, 1977 (Chapter 588 Statutes of Nevada 1977).

12. July 1, 1977—Nevada Division of Environmental Protection assumes enforcement responsibility of Mohave Generating Station. Legislative amendment to the SIP implemented.

13. August 7, 1977—The Clean Air Act Amendments of 1977 were enacted.

14. October 14, 1977—EPA found Mohave Generating Station to be in violation of article 7, and orders another test.

15. October 27, 28, and 29, 1977—Particulate emission source tests performed on unit 2 at Mohave Generating Station.

16. November 9, 10, and 11, 1977—Particulate emission source tests performed on unit 1 at Mohave Generating Station.

17. November 17, 1977—Conference held with Southern California Edison to discuss violations of article 7 from May 3-10, 1977, source test and issuance of order.

18. December 21, 1977—A public notice was published announcing the contents of this order.

19. January 26, 1978—Final order and Notice of Alleged Air Quality Violation issued.

Pursuant to section 113(d) of the act and sections 456 and 473 of NRS Chapter 445, a public notice was published on December 21, 1977, containing the contents of the order and notice of an opportunity for a public hearing. No written comments or requests for a public hearing were received on the proposed order.

After a review of the conference record and a thorough investigation of all relevant facts, including the seriousness of said violation, it has been

determined that compliance in accordance with the schedule hereinafter set forth, is as expeditious as practicable.

ORDERED

A. That Southern California Edison Co. shall complete the following acts with respect to the Mohave Generating Station for the particulate matter emissions from unit No. 1 and unit No. 2 on or before the dates specified:

1. February 1, 1978—Unit No. 1 shall cease operation to commence repair and/or reconstruction on unit No. 1 electrostatic precipitator north and south sections.

2. April 1, 1978—Repair and/or reconstruction on unit No. 1 electrostatic precipitator north and south sections shall be completed.

3. April 1, 1978—Submit a source test plan for particulate matter emission tests on unit No. 1 and unit No. 2 to the Director, Department of Conservation and Natural Resources.

4. July 1, 1978—Final compliance with article 7.1.1.2 by unit No. 1 and unit No. 2 shall be achieved, demonstrated by particulate matter emission tests.

B. That the source test report from the particulate matter emission tests required by paragraph A.4 shall include the information specified in attachment I of this order.

C. That Southern California Edison Co. shall certify to the Director, Department of Conservation and Natural Resources, no later than 5 days following the date for completion of each increment of progress required by paragraph A above whether such increment has been met.

D. That Southern California Edision Co. will be required to pay a noncompliance penalty under section 120 of the Act in the event Mohave Generating Station unit No. 1 fails to achieve compliance by July 1, 1979, and the Director provides notification of such noncompliance to Southern California Edison Co. This noncompliance penalty will be assessed in accordance with section 120 of the Act for each day unit No. 1 is in operation after July 1, 1979.

Dated: January 26, 1978.

NORMAN HALL,
*Director, Department of Conservation and Natural Resources.*

Receipt of this compliance order is hereby acknowledged:

Dated: February 3, 1978.

A. ARENAL,
*Vice President.*

ATTACHMENT 1—DIVISION OF ENVIRONMENTAL PROTECTION, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

SOURCE TEST REPORT FORMAT

The source test report should contain all data relevant to the tests which were conducted. A description of the process being tested, the operating conditions under which the tests were conducted, the test procedures used, and the results of the tests, should all be included in the report. The following information should be provided:

*I. Introduction*

A. Plant name, address, and location.
B. Dates of testing.
C. Name and address of the testing organization and the name of test team supervisor.
D. Purpose of the test.
E. Pollutants measured.
F. Names of observers.

*II. Summary*

A. Emission results.
B. Applicable regulations showing allowable emissions.
C. Process data as related to the determination of compliance.
D. Description of pollutants measured and samples collected.
E. Visible emissions summary during test.
F. Deviations from standard source test procedures or normal operating conditions.

*III. Process Description*

A. Description of process including emission control equipment.
B. Maximum rated operating capacity of the process.
C. Flow diagram of the process.
D. Type and quantity of raw materials and finished products processed during the tests.
E. Process data monitored during the tests.
F. Actual percent of maximum operating capacity of the process during the tests.

*IV. Sampling Procedure*

A. Description of the sampling train and the field procedures used.
B. Description of sample recovery and analytical procedures used.
C. Sketch indicating sampling port locations relative to the process, the control equipment, and any upstream or downstream flow disturbances.
D. Sketch of cross section of stack showing traverse point locations.
E. Description of the quality assurance procedures followed by the laboratory for the analytical procedures.
F. Description of chain of custody procedures followed to insure the integrity of the samples.

*V. Test Results*

A. Tabulations of results showing a comparison between actual emission rates and allowable emission rates.
B. Discussion of significance of results relative to operating parameters and emission regulations.
C. Discussion of significance of divergences from normal sampling procedures or normal operating conditions which could have an effect on test results. Where divergences occurred, calculate the positive or negative bias in the results.

*VI. Calculations and Data Reductions Methods*

A. Description of computational methods used including equations used to obtain final emission results from field data.

APPENDIX

1. Copies of all field data collected during the tests including sample data sheets and process operation logs.
2. Copies of all analytical laboratory data sheets.
3. Copies of calculation sheets.
4. Copies of sampling equipment and calibration data sheets.
5. Names and titles of personnel and organizations participating in the tests.
6. Visible emission observation sheets for observations performed during the tests.
7. Copies of in-duct opacity measurements during the sampling periods for both units.

[FR Doc. 78-20367 Filed 7-21-78; 8:45 am]

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[6570-06]

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1602]

### RECORDKEEPING REGULATIONS

**Proposed Rulemaking and Notice of Public Hearing**

NOTE.—This document was submitted for publication in this issue of the FEDERAL REGISTER. It was held for editorial processing and will be printed in the FEDERAL REGISTER tomorrow, July 25, 1978.

# 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.

[3410-11]

## DEPARTMENT OF AGRICULTURE

### Forest Service

### GRAZING FEE SYSTEM, EASTERN REGION, FOREST SERVICE

### Review of Current Methods

ACTION: Notice of review of grazing fees.

SUMMARY: The Forest Service is reviewing current methods of determining fees for grazing livestock on national forest system lands in the eastern region. Comments are invited. If the review indicates the need, the Forest Service intends to institute a revised grazing fee system by March 1, 1979.

COMMENT PERIOD: Written comments are invited until September 30, 1978.

ADDRESS: Written comments should be directed to Regional Forester, USDA, Forest Service, 633 West Wisconsin Avenue, Milwaukee, Wis. 53203.

FOR FURTHER INFORMATION CONTACT:

Deen Boe, USDA, Forest Service, 633 West Wisconsin Avenue, Milwaukee, Wis. 53203, phone 414-291-1371.

SUPPLEMENTARY INFORMATION: The eastern region of the Forest Service, headquartered in Milwaukee, Wis., administers national forest system land in 13 States. Four States and three national forests within the region currently have active Forest Service grazing permits and collect grazing fees. These are the: Green Mountain National Forest in Vermont and New York, Mark Twain National Forest in Missouri, and Monogahela National Forest in West Virginia. National forests in the remaining States will be affected by the current or revised grazing fee system should grazing permits be issued in those areas. The remaining nine States are: Illinois, Indiana, Maine, Michigan, Minnesota, New Hampshire, Ohio, Pennsylvania, and Wisconsin.

The Forest Service is required to charge fair market value for grazing livestock on national forest system lands. Determination of fair market value includes consideration for both value of grazing and the contributions provided by or required of the permittee in the care and use of land for grazing livestock.

The system for determining fair market value is reevaluated periodically. The current system is now being reviewed by the eastern region of the Forest Service to determine if fee levels and methods for establishing them need to be replaced or modified.

Written comments should: 1. Indicate factors that should be considered in a grazing fee system.

2. Indicate the availability of data or other information that would be relevant to the review.

3. Indicate opinion of appropriate fee levels.

Dated: July 17, 1978.

H. PETER WINGLE,
*Director, Recreation, Range, Wildlife, and Landscape Management.*

[FR Doc. 78-20431 Filed 7-21-78; 8:45 am]

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[3410-16]

### Soil Conservation Service

### ADAMS COUNTY ROADSIDE CRITICAL AREA TREATMENT R.C. & D. MEASURE, OHIO

### Intent Not To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Adams County Roadside Critical Area Treatment R.C. & D. Measure, Ohio.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert E. Quilliam, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement will be to seed approximately 51 acres of roadbanks.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert E. Quilliam, State Conservationist, Soil Conservation Service, 522 Federal Building, 200 North High Street, Columbus, Ohio 43215, phone 614-469-6962. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 23, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703 (16 U.S.C. 590 a-f, q).)

[FR Doc. 78-2038 Filed 7-21-78; 8:45 am]

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[3410-16]

### KING'S MARK R.C. & D. AREA CRITICAL AREA TREATMENT R.C. & D. MEASURES, CONNECTICUT

### Intent Not To Prepare Environmental Impact Statements

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for the King's Mark R.C. & D. Area Critical Area Treatment R.C. & D. Measures, Connecticut.

The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. John W. Tippie, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for this project.

The measures concern plans for critical area treatment to reduce damage caused by gully and rill erosion and the resulting sediment. The planned works of improvement include

about 360 acres to be shaped and vegetatively treated, the installation of approximately 380,000 feet of pipe with associated structures, and the placement of about 80,000 cubic yards of rock riprap.

The notice of intent not to prepare environmental impact statements has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. John W. Tippie, State Conservationist, Soil Conservation Service, Mansfield Professional Park, Storrs, Connecticut 06268, telephone 203-429-9361. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 23, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703 (16 U.S.C. 590 a-f, q).)

Dated: July 13, 1978.

JOSEPH W. HAAS,
*Assistant Administrator for Water Resources, Soil Conservation Service.*

[FR Doc. 78-20389 Filed 7-21-78; 8:45 am]

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[6320-01]

## CIVIL AERONAUTICS BOARD

[Docket 32711; Order 78-7-68]

### DALLAS/FORT WORTH-NEW ORLEANS-FLORIDA SERVICE INVESTIGATION

#### Order of Consolidation

Issued under delegated authority July 18, 1978.

In the matter of applications of Air Florida, Inc.; American Airlines, Inc.; Braniff Airways, Inc.; Continental Air Lines, Inc.; Delta Air Lines, Inc.; National Airlines, Inc.; North Central Airlines, Inc.; Northwest Airlines, Inc.; Piedmont Aviation, Inc.; Southern Airways, Inc.; Texas International Airlines, Inc.; and Western Air Lines, Inc. Dockets 32982, 32282, 32928, 32938, 31124, 32883, 32976, 32962, 32950, 32955, 32430, and 32963.

Order 78-5-129, which was served June 12, 1978, instituted an investigation in Docket 32711 to determine whether the public convenience and necessity require that new nonstop authority be granted in the following nine markets:

Dallas/Fort Worth-Tampa,
Dallas/Fort Worth-Miama,
Dallas/Fort Worth-Fort Lauderdale,
New Orleans-Tampa
New Orleans-Miami,
New Orleans-Fort Lauderdale,
Tampa-Miami,
Tampa-Fort Lauderdale, and
Miami-Fort Lauderdale

Previously filed applications of American Airlines, Inc., in Docket 32282 and Texas International Airlines, Inc., in Docket 32430 were consolidated into Docket 32711 to the extent they conformed to the scope of the investigation, and were otherwise dismissed.[1]

Applications and motions to consolidate into Docket 32711 were timely filed by Air Florida, Inc. (Docket 32982), Braniff Airways, Inc. (Docket 32928), Continental Air Lines, Inc. (Docket 32938), National Airlines, Inc. (Docket 32883), North Central Airlines, Inc. (Docket 32976), Northwest Airlines, Inc. (Docket 32962), Piedmont Aviation, Inc. (Docket 32950), Southern Airways, Inc. (Docket 32955), and Western Air Lines, Inc. (Docket 32963), Delta Air Lines, Inc., filed an amended application in Docket 31124, which it moved to consolidate. American has filed a second amendment to its application in Docket 32282, and Texas International has filed an amendment to its application in Docket 32430, both of which are requested to be consolidated into Docket 32711.[2]

No answers have been filed to the applications or motions to consolidate insofar as they conform to the scope of the investigation.

These applications will be consolidated into Docket 32711 to the extent that they conform to the scope of the investigation instituted in Order 78-5-129; that is, to the extent that they request nonstop authority in any of the nine markets specified above. To the extent that the applications do not conform to that scope, by route description or otherwise, they will not be consolidated by this order.

Pursuant to authority delegated to the presiding administrative law judge by Order 78-5-129, served June 12, 1978,

*It is ordered*, That: 1. The motions to consolidate the applications of Air Florida, Inc., in Docket 32982, Braniff Airways, Inc., in Docket 32928, Continental Air Lines, Inc., in Docket 32938, National Airlines, Inc., in Docket 32883, North Central Airlines, Inc., in Docket 32976, Northwest Airlines, Inc., in Docket 32962, Piedmont Aviation, Inc., in Docket 32950, Southern Airways, Inc., in Docket 32955, and Western Air Lines, Inc., in Docket 32963, the amended applications of Delta Air Lines, Inc., in Docket 31124 and Texas International Airlines, Inc., in Docket 32430, and the second amended application of American Airlines, Inc., in Docket 32282 into the investigation in Docket 32711 are granted to the extent that the applications conform to the scope of the investigation into the need for new nonstop authority in the nine markets specified in Order 78-5-129.

2. The following are made parties to the proceeding in Docket 32711: Air Florida, Inc., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., and Western Air Lines, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By Katherine A. Kent, Administrative Law Judge.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 78-20462 Filed 7-21-78; 8:45 am]

[1] Petitions for reconsideration of Order 78-5-129, which have been filed by Air Florida, American, Braniff, Continental, and Western, will be dealt with by separate order of the Board.

[2] On July 12, 1978, Ozark Air Lines, Inc., filed an application and motion to consolidate accompanied by a motion to file late (Docket 33017). Since the time for filing answers to Ozark's motions has not elapsed, they will be disposed of by separate order.

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[6335-01]

## CIVIL RIGHTS COMMISSION

### NORTH DAKOTA ADVISORY COMMITTEE

#### Agenda and 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 and conference meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 1 p.m., on August 10, 1978, conference room No. 261, Federal Building, 220 East Rosser, 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, Suite 1700, Denver, Colo. 80202.

Press conference to release the advisory committee report, Indian Justice Issues in North Dakota—and to plan future projects.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 18, 1978.

JOHN I. BINKLEY,
*Advisory Committee Management Officer.*

[FR Doc. 78-20430 Filed 7-21-78; 8:45 am]

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[3510-03]

## DEPARTMENT OF COMMERCE

### Maritime Administration

[Docket No. S-618]

### SUWANNEE RIVER FINANCE, INC., SUWANNEE RIVER SPA FINANCE, INC., SUWANNEE RIVER PHOSPATE FINANCE, INC.

### Application

Notice is hereby given that applications dated March 17, 1978, have been filed under the Merchant Marine Act, 1936, as amended (the Act), for operating-differential subsidy with respect to the operation of three liquid bulk integrated tug/barge vessels for service in the U.S. foreign trade. The proposed trade is from U.S. ports to various Baltic, Mediterranean, and Black Sea ports and ports in Europe.

The applicant companies are wholly owned by Occidental petroleum Investment Co., which in turn is wholly owned by Occidental Petroleum Corp. Other subsidiaries of Occidental are parties to charters for the carriage of cargoes in the domestic, intercoastal, and coastwise trades. Accordingly, written permission of the Martime Administration under section 805(a) of the act will be required if these applications for operating-differential subsidy are to be granted.

The Occidental subsidiaries which are parties to the above described charters and the contracted vessel owners or operators (shown in parentheses) are: The Permian Corp. (Coastal Towing, Inc., and Barge Transport Co.); Hooker Chemicals & Plastics Co. (Keystone Shipping Co.); Occidental Chemical Investments Corp. (Wells Fargo Bank, National Association); and Island Creek Coal Sales Co. (Crounse Corp.).

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on July 27, 1978, file same with the Secretary, Maritime Administration in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations: (a) Could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By order of the Assistant Secretary for Maritime Affairs.

Dated: July 18, 1978.

JAMES S. DAWSON, Jr.,
*Secretary.*

[FR Doc. 78-20328 7-21-78; 8:45 am]

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[3510-22]

### National Oceanic and Atmospheric Administration

### CARIBBEAN FISHERY MANAGEMENT COUNCIL

### Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee and the Advisory Panel of the Caribbean Fishery Management Council, established by section 302g(2) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet jointly to examine alternatives and provide written recommendations to the Council for the first draft fishery management plan for mollusks. This meeting is open to the public. For more information on seating, changes to the agenda, or written comments, contact the Executive Director.

DATES: The meeting will start at 10 a.m. and will adjourn at about 3 p.m. on August 14, 1978.

ADDRESS: The meeting will take place at the Council's office located at Suite 1108, Banco de Ponce Building, Hato Rey, P.R.

FOR FURTHER INFORMATION CONTACT:

Mr. Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, P.R. 00918, telephone 809-753-4926.

Dated: July 18, 1978.

WINFRED H. MEIBOHM,
*Associate Director, National Marine Fisheries Service.*

[FR Doc. 78-20329 Filed 7-21-78; 8:45 am]

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[3510-22]

### PACIFIC FISHERY MANAGEMENT COUNCIL

### Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Advisory Subpanel and Plan Development Team of the Pacific Fishery Management Council, established by section 302(a) of the Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss the first draft of the groundfish fishery management plan.

DATES: The meeting will convene at 1 p.m. and adjourn at about 5 p.m. on August 8, 1978, reconvening at 8 a.m. and adjouring about 5 p.m. on August 9, 1978.

ADDRESS: The meeting will take place at the Sheraton Renton Inn located at 800 Rainier Avenue South, Renton, Wash.

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Mangement Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201, telephone 503-221-6352.

Dated: July 18, 1978.

WINFRED H. MEIBOHM,
*Associate Director, National Marine Fisheries Service.*

[FR Doc. 78-20330 Filed 7-21-78; 8:45 am]

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[3510-22]

### PACIFIC FISHERY MANAGEMENT COUNCIL

### Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Billfish Advisory Subpanel and Plan Development Team of the Pacific Fishery Management Council, established under section 302(a) of the Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss the preliminary draft of the billfish fishery management plan.

DATES: The meeting will convene at 10 a.m. and adjourn at about 5 p.m. on August 21, 1978.

ADDRESS: The meeting will take place at the Southwest Fisheries Center located at 8604 La Jolla Shores Drive, La Jolla, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201, telephone 503-221-6352.

Dated: July 18, 1978.

WINFRED H. MEIBOHM,
*Associate Director, National Marine Fisheries Service.*

[FR Doc. 78-20331 Filed 7-21-78; 8:45 am]

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[3128-01]

## DEPARTMENT OF ENERGY

### Energy Information Administration

### PROPOSED DATA COLLECTION REDUCTION

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of discontinuance of five data collection forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notices of a proposal to discontinue data collection on five petroleum-related forms and solicits comments thereto. Five data collection forms previously used by the Bureau of Mines, and now being used by the Energy Information Administration, are being discontinued. This action is being taken to reduce the burden upon respondents that use these forms to report data. The data collected using these forms will not be available for publication after the forms are discontinued. The EIA no longer has need for these data.

DATE: Written comments by August 23, 1978.

ADDRESS: Submit written comments to: The Director of Oil and Gas Statistics, Code 2902, Department of Energy, Energy Information Administration, Washington, D.C. 20241.

FOR FURTHER INFORMATION CONTACT:

William G. Park (Oil and Gas Statistics), Energy Information Administration, 2401 E Street NW., Room 628, Washington, D.C. 20241, 202-634-1044.

SUPPLEMENTARY INFORMATION: The Energy Information Administration (EIA) of the Department of Energy (DOE) is no longer in need of the following data systems and their supportive forms:

Form 6-1301-A, Sales of Aviation Fuel, currently collects data on sales of aviation gasoline and jet fuels by type of fuel by end use by P.A.D. District.

Form 6-1309-M, Crude Petroleum Gathered From Leases in Selected States, currently collects data monthly on crude oil production in States where these data are not compiled monthly by State agencies.

Form 6-1329-A, Sales of Asphalts and Road Oils, currently collects annual data on sales of asphalts and road oils by type by end use by State.

Form 6-1336-A, Production of Other Finished Products at Petroleum Refineries, currently collects annual data on production of miscellaneous products such as absorption oils, petrolatum, specialty oils, etc.

Form 6-1342-A, Carbon Black, currently collects annual information on inputs of gaseous and liquid hydrocarbons and outputs of various grades of carbon black.

The EIA proposes the discontinuance of these data collection forms in order to reduce the burden upon respondents that use these forms to report data. The data collected using these forms will not be available for publication after the forms are discontinued.

COMMENT PROCEDURE

*Written comments.* Before a final decision is made, consideration will be given to any relevant comments submitted in writing with respect to this proposal. Accordingly, comments are requested to be submitted no later than 30 days following publication of this notice. Any person that wishes to do so may submit written views or comments with respect to this proposal. All comments should be addressed to the Director, Oil and Gas Statistics, at the address indicated above and should be identified on the outside envelope and on the document with the designation: "EIA Proposed Data Collection Reduction." Two copies should be submitted.

Any information or data submitted which a person considers to be confidential must be so identified. Two copies of the confidential material should be provided. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

Issued at Washington, D.C., July 14, 1978.

LINCOLN E. MOSES,
*Administrator, Energy Information Administration.*

[FR Doc. 78-20386 Filed 7-21-78; 8:45 am]

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[3128-01]

### Economic Regulatory Administration

[ERA Docket No. 78-004-LNG]

### COLUMBIA LNG CORP. AND CONSOLIDATED SYSTEM LNG CO.

### Application To Import Liquefied Natural Gas into the United States From Iran

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of application and invitation to submit petitions to intervene in the proceedings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the joint application by Columbia LNG Corp. (Columbia) and Consolidated System LNG Co. (Consolidated), in ERA Docket No. 78-004-LNG, for authorization under Section 3 of the Natural Gas Act to import certain quantities of liquefied natural gas (LNG) from Iran into the United States. All proposed import quantities of LNG will be purchased from the National Iranian Gas Co. (NIGC), F.O.B. at ships rail, Kangan, Iran. Columbia has contracted to purchase an annual loaded quantity of 70,000,000 million Btu's (175,000 Mcf per day equivalent) and Consolidated has contracted to purchase 50,000,000 million Btu's (125,000 Mcf per day equivalent). The terms of the contracts are for a 20-year period after initial buildup. The Applicant's estimated F.O.B. LNG sales price for the first year of full deliveries is $1.81 per million Btu, and the average transportation cost by LNG vessels from Kangan, Iran, to the Columbia LNG terminal at Cove Point, Md., is $2 million Btu. Transportation will be arranged by Columbia for itself and Consolidated. Petitions to intervene are invited.

DATES: Petitions to intervene: August 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, 2000 M Street NW., Room 6318, Washington, D.C. 20461, telephone: 202-254-9730. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5116, Washington, D.C. 20461, telephone 202-566-9380.

SUPPLEMENTARY INFORMATION:

*Background.* On June 27, 1978, Columbia LNG Corp. 20 Montchanin Road, Wilmington, Del. 19807, and Consolidated System LNG Co. 445 West Main Street, Clarksburg, W. Va. 26301, hereinafter referred to as applicants, filed a joint application at Docket No. 78-004-LNG for authorization under Section 3 of the Natural

Gas Act to import a quantity of LNG to be produced in Iran, all as more fully set forth in the application on file with the ERA and open to public inspection in the Public Docket Room at 2000 M Street NW., Washington, D.C., Room B120, between the hours of 1 p.m. and 5 p.m., Monday through Friday, except for Federal holidays.

Applicants propose to import quantities of LNG they have contracted to purchase from NIGC consisting of an annual loaded quantity of LNG containing 70,000,000 million Btu's or the equivalent of approximately 175,000 Mcf of natural gas daily for Columbia and of an annual loaded quantity of LNG containing 50,000,000 million Btu's or the equivalent of approximately 125,000 Mcf of natural gas daily for Consolidated, each for a 20-year period after the initial buildup. Such LNG will be produced in Iran and will be purchased from NIGC by applicants F.O.B. at ship's rail, Kangan, Iran.

It is stated that the natural gas to be liquefied by NIGC will be produced by the National Iranian Oil Co. (NIOC) from the Pars Gas Field which is located offshore Iran in the Persian Gulf, and gathered and transported by pipeline approximately 90 kilometers to NIGC's treating and liquefaction facilities located near Kangan, Iran. After treatment at Kangan, the gas will be transported by marine pipeline approximately 4.5 kilometers offshore to a floating barge-mounted LNG liquefaction plant and ship terminal where the gas will be liquefied, stored and delivered to LNG vessels. Applicants state that subject to the completion of final plans and specifications and the execution of a final building contract it is currently contemplated that the Norwegian firm of Moss Rosenberg Verft A/S will be responsible for the construction of the barge-mounted liquefaction, storage, and delivery facilities which would be delivered at Kangan, Iran, at a price which remains fixed until December 31, 1978.

It is stated that the contract sales price for the LNG F.O.B. Kangan will be the greater of either a floor price of an adjusted price. The floor price will be $1.81/MMBtu on the date of initial delivery and remain in effect at that level for three years after which it will escalate annually by $.08/year. The adjusted price is initially $1.50/MMBtu and is subject to adjustment twice a year. The escalator will be based 50 percent on changes in the posted price of Iranian light crude oil (34°API) F.O.B. Kharg Island, Iran, (from a base price of $13.77/BBL) and 50 percent on changes (from a base of 189.5) in the Producer (Wholesale) Price Index for industrial commodities less fuels and related products and power published by the U.S. Department of Labor, Bureau of Labor Statistics.

It is stated that applicants will enter into a Transportation Service Agreement by which Columbia, on its own behalf and on behalf of Consolidated, will arrange for six LNG vessels for the shipment and delivery of such LNG on terms and conditions to be agreed to between applicants and the owners or operators of the vessels. The cost of transportation will be the actual cost of engaging such vessels on the basis of competitive bids and negotiations plus costs reasonably incurred by Columbia in performing under the Transportation Service Agreement. It is estimated that the average transportation cost of the first full year of operations will be approximately $2/MMBtu delivered to Cove Point.

Initial deliveries to applicants during the buildup period are expected to commence early in 1982 with a date of first regular delivery expected to be in 1983.

Applicants state that they are filing separate applications with the Federal Energy Regulatory Commission under section 7(c) of the Natural Gas Act for an order authorizing the transportation and sale in interstate commerce for resale of the regasified LNG.

The applicants propose to import the LNG at Columbia's Cove Point, Md., LNG terminal and state that this LNG will make use of existing unutilized capacity in the terminal.

Applicants anticipate that the proposed importation of LNG into the United States will provide a substantial long-term supply of gas to meet high priority requirements served by their pipeline affiliates and diversify existing foreign LNG supplies.

### Other Information

The ERA is hereby inviting petitions for intervention to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street NW., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., e.d.t., August 10, 1978.

The ERA is not seeking extensive comments on the petition at this time, but will call for comments or announce a hearing when the petition is complete enough to elicit well reasoned argument on all aspects of the proposal.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened therein must file a petition to intervene in accordance with the above-mentioned rules.

Take further notice that, pursuant to the authority contained in section 3 of the Natural Gas Act, which was delegated to the ERA, in the Department of Energy Delegation Order No. 0204-4 (42 FR 60726, November 29, 1977), and adopted the rules of practice and procedure, a formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is deemed required, due notice will be given by appropriate order.

Issued in Washington, D.C., on July 17, 1978.

BARTON R. HOUSE,
*Assistant Administrator, Fuels Regulations, Economic Regulatory Administration.*

[FR Doc. 78-20405 Filed 7-21-78; 8:45 am]

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[6740-02]

## Federal Energy Regulatory Commission

[Docket No. RI78-71]

## AMERICAN PETROFINA CO. OF TEXAS

### Petition for Special Relief

JULY 14, 1978.

Take notice that on June 19, 1978, American Petrofina Co., of Texas (American Petrofina), P.O. Box 2159, Dallas, Tex. 75221, in docket No. RI78-71 filed a petition for special relief pursuant to section 2.76 of the Commission's general policy and interpretations (18 CFR § 2.76).

On April 12, 1978, the Commission authorized American Petrofina to collect 85.89 cents per Mcf for its interest in the gas sold to Texas Gas Transmission Corp. from the Lake Palourde Field, St. Martin Parish, La. Pursuant to a contractual agreement with CNG Producing Co. (CNG) which was triggered by American Petrofina reworking and operating this field at its own expense, American Petrofina now has a contractual right to CNG's interest, and requests authorization to collect 85.89 cents per Mcf for the interest held by the nonparticipating party, CNG. CNG's interest in the gas is presently authorized to be sold at 29 cents per Mcf.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 26, 1978, file a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in de-

termining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20339 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RI77-108 and Docket No. RI78-62]

**JOHN P. BOOTH & ASSOCIATES AND ATLANTIC RICHFIELD CO.**

**Petition for Special Relief**

JULY 17, 1978.

Take notice that on June 23, 1977, as amended May 2, 1978, John P. Booth & Associates (petitioner), 209 Philtower Building, Tulsa, Okla. 74103, filed a petition for special relief, seeking an increase in rate for natural gas sales to Northern Natural Gas Co. (Northern) from the Sitka Unit, Hugoton-Anadarko area, Clark County, Kans. Petitioner seeks an increase from a rate of 35 cents per Mcf to a rate of 58 cents per Mcf plus applicable ad valorem tax, as agreed to by Northern. Petitioner states that the applicable four wells are currently being operated at a loss and that the requested rate increase is necessary to prevent abandonment of these wells.

Take further notice that Atlantic Richfield Co. (Atlantic), North American Producing Division, Natural Gas Department, P.O. Box 2819, Dallas, Tex. 75221, filed on May 1, 1978, as amended May 2, 1978, a petition for special relief pursuant to 18 CFR § 2.76 requesting a base rate of 58.0 cents per Mcf at 14.65 psia plus 100 percent State tax reimbursement and subject to Btu adjustment for the sale of its gas from Bick, well No. 1; McMinimy, well No. 1; East McMinimy, well No. 1; and Swayze, well No. 1, Sitka field, Clark County, Kans., to Northern Natural Gas Co. The sale is currently being made pursuant to contracts dated August 18, 1961, and June 12, 1961, under the certificate issued in docket Nos. CI62-531 and CI62-105 and rate schedule Nos. 462 and 234 at the rate of 29.5 cents per Mcf.

Atlantic states that in order to continue gas production from the subject wells that it will be necessary to install a compressor to compress the gas. Atlantic further states that the operator and holder of an interest, John P. Booth & Associates (petition for special relief in docket No. RI78-108), estimates a cost of $22,622 to install a rental compressor and total operating expenses of $31,176 annually. Atlantic states that this work cannot be economically justified at the current price level of the gas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20348 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ID-1852]

**DONALD BROWN**

**Application**

JULY 14, 1978.

Take notice that on June 22, 1978, Donald Brown (applicant) filed an application, pursuant to section 305(b) of the Federal Power Act, to hold the following positions:

Director and vice president, Beebee Island Corp., public utility.
Area general manager, Watertown area, Niagara Mohawk Power Corp., public utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 1.8, 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before August 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20344 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. CP78-177]

**CITIES SERVICE GAS CO.**

**Amendment to Application**

JULY 14, 1978.

Take notice that on June 28, 1978, Cities Service Gas Co. (applicant), P.O. Box 25128, Oklahoma City, Okla. 73125, filed in docket No. CP78-177, pursuant to section 7 of the Natural Gas Act, an amendment to its pending application in said docket so as to delete from said application its request to abandon service to 35 customers located along the segment of pipeline which is proposed to be abandoned and to request a certificate of public convenience and necessity authorizing the construction and operation of a pipeline replacing that sought to be abandoned, all as more fully set forth in amendment which is on file with the Commission and open to public inspection.

It is stated that in its original application applicant requested authorization to abandon, in place and by reclaim, approximately 6.3 miles of its Riverton 10-inch pipeline located in Cherokee County, Kans., due to its age and deteriorated condition. This abandonment would have resulted in the abandonment of service to 35 rural domestic customers being served pursuant to right-of-way agreements, it is said. Applicant asserts that it planned to reimburse these customers for costs of converting to an alternate fuel. As a result of protests filed by these customers applicant now proposes to install 5.3 miles of 2-inch pipeline replacing the deteriorated 10-inch one and connect these 35 existing customers to the 2-inch pipeline thereby continuing service to them.

The estimated cost of this construction is said to be $140,390, which cost would be financed from treasury cash, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commis-

sion's rules. All persons who have heretofore filed need not file again.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20340 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RI78-64]

**C. K. OIL CO.**

**Petition for Special Relief**

JULY 14, 1978.

Take notice that on May 22, 1978, C. K. Oil Co. (petitioner), 512 Washington, Great Bend, Kans. 67530, filed a petition for special relief in docket No. RI78-64 pursuant to section 2.76 of the Commission's general policy and interpretations. Petitioner seeks an increase in its rate of 37 cents per Mcf to $1.50 per Mcf for the sale of gas from a well located in CNU SW sec. 31, Tp. 32 S., R. 14 W., Barber County, Kans. to the purchaser, Cities Service Gas Co. Petitioner states it is necessary to install compression and pumping facilities to obtain efficient production from the sec. 31 well. Petitioner further states that the rate increase is necessary to pay increased operating expenses and retire the loan on the investment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20342 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket Nos. RP77-7, RP77-140, and RP78-52]

**CONSOLIDATED GAS SUPPLY CORP.**

**Informal Conferences**

JULY 17, 1978.

Take notice that an informal conference in docket Nos. RP77-7 and RP77-140 will be held on August 22, 1978, at 11 a.m., at the offices of the Federal Energy Regulatory commission, 825 North Capitol Street NE., Washington, D.C. The conference is being convened pursuant to the agreement of the parties for the purpose of discussing matters relating to Consolidated Gas Supply Corp.'s (Consolidated) purchased gas adjustment tariff provision, and to its proposed conversion from a volumetric to an energy basis for billing its customers.

Take notice also that an additional informal conference in all of the above-captioned dockets will be held on September 11, 1978, at 11 a.m., at the Commission's offices at the above address. The conference is being convened again pursuant to an agreement of the parties for the purpose of discussing the following matters: A proposal of Consolidated to resolve the depreciation issue in RP77-7 and RP77-140; Consolidated's actual cost of service data for the effective period of docket No. RP77-140, which data is to be served in advance of the conference; and matters arising generally in docket No. RP78-52 to the extent possible in light of Consolidated's updated cost of service filing which is to be made in docket No. RP78-52 within 30 days of the commencement of LNG purchases.

Customers and other interested persons will be permitted to attend, but if such persons have not been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss all issues indicated above, to make and accept offers of settlement with respect to those issues, and to make commitments concerning procedural matters antecedent to a full evidentiary hearing should such hearing be required.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20341 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket Nos. AR70-1, CP69-23 & RP72-155]

**EL PASO NATURAL GAS CO.**

**Payment of Refunds**

JULY 13, 1978.

Take notice that on May 24, 1978, El Paso Natural Gas Co. ("El Paso") tendered for filing a report of refunds made on April 28, 1978, to certain of its customers whose contracts provide for sales rates based upon changes in the weighted average cost of clean, high pressure pipeline quality gas. El Paso states that such refunds have been made in accordance with its intended disposition of refunds filed with the Commission of February 7, 1978, and the Commission letter order of April 12, 1978, approving such plan. El Paso also states that in its intended disposition of refunds the aggregate refund amount determined was $35,553.45.

El Paso further states that in compliance with said Commission order, El Paso, on April 28, 1978, transmitted refund checks aggregating $29,679.55 to those customers entitled to a cash flow-through of refunds and whose services had previously been subject to special FS rate schedules in El Paso's volume No. 2A tariff and the remaining amount of $5,873.90 was credited to account 191, in accordance with the applicable provisions of the currently effective purchased gas cost adjustment-clean high pressure gas provision contained in El Paso's original volume No. 2A tariff.

El Paso states that copies of the filing were served on all of El Paso's affected interstate transmission customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before July 25, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a peti-

tion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20345 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ID-1754]

**C. ROBERT EVERMAN**

**Application**

JULY 14, 1978.

Take notice that on June 20, 1978, C. Robert Everman (applicant), filed an application, pursuant to section 305(b) of the Federal Power Act, to hold the following positions:

Assistant Secretary and Assistant Treasurer, the Cincinnati Gas & Electric Co., public utility.
Assistant Secretary and Assistant Treasurer, the Union Light, Heat, & Power Co., public utility.
Assistant Secretary and Assistant Treasurer, Miami Power Corp., public utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before August 7, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20343 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. CS73-545]

**W. R. GRACE & CO., THE POLUMBUS CO.**

**Petition, for Waiver**

JULY 14, 1978.

Take notice that the Polumbus Co. (Polumbus), a division of W. R. Grace & C., Three Central, Suite 200, 1515 Arapahoe Street, Denver, Colo. 80202, filed on November 11, 1977, a petition for waiver of the provisions of section 2.56a of the FERC regulation under the Natural Gas Act to permit the collection of the rate of $1.42 per Mcf for sale of gas from its Slade 2601 well, Alkali Gulch Field, LaPLata County, Colo., to Northwest Pipeline Corp. The sale is currently being made at $0.93 per Mcf, plus escalations and applicable adjustments.

In support of its petition, Polumbus recites the history of Slade 26-1 well including the severe casing failure and other occurrences beyond Polumbus' control which eventually required rework of the well instead of carrying out the intended plugging and abandonment of the well which was to be placed by a new well 250 feet away. Polumbus states that the costs incurred in the rework were substantially more than would have been incurred in drilling a new well, and that these higher costs were all incurred after January 1, 1975, and that the costs were necessary to the flow of gas which exists today.

Any person desiring to be heard or to make any protest with reference to said petition should on or before July 28, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and prcedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20365 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ES78-47]

**IOWA ELECTRIC LIGHT & POWER CO.**

**Application**

JULY 13, 1978.

Take notice that on June 30, 1978, Iowa Electric Light & Power Co. (Applicant) filed an application with the Commission pursuant to section 204 of the Federal Power Act and part 34 of the Commission's regulations, for authorization to engage in negotiations for the sale by private placement of up to 150,000 shares of cumulative preferred stock having a par value of $100 per share (preferred stock).

Applicant is incorporated under the laws of the State of Iowa and is authorized to do business in the States of Iowa, Minnesota, Colorado, and Nebraska with its principal business office at Cedar Rapids, Iowa. Applicant is engaged primarily in the generation, transmission, and sale at retail of electric energy in 55 counties in the State of Iowa.

The Applicant believes that a negotiated sale by private placement of preferred stock would be advantageous to it because an analysis of recent issues of preferred stock indicate that the cost of issuance of preferred stock sold in the public market is more costly than the issuance of preferred stock in the private placement market.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests shall be filed on or before July 28, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20346 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. CI78-677]

**R. LACY, INC.**

**Petition for Declaratory Order**

JULY 14, 1978.

On April 21, 1978, R. Lacy, Inc. (Lacy) filed a petition pursuant to section 1.7(c) of the Commission's rules of practice and procedure (18 CFR 1.7(c)) requesting the issuance of a declaratory order by the Commission, determining that the Commission order of September 21, 1974, deleting all depths from commitment at 7,000 feet or below in the Abney Unit No. 1 and Abney Unit No. 2 in the Waskom Field, Harrison County, Tex., is applicable to its undivided half interest in the subject units.

In its petition, Lacy states further that it owns an undivided half interest in a lease known as Abney Unit No. 1 and Abney Unit No. 2 covering property in the Waskom Field, Harrison County, Tex. and that the other undivided half interest in the lease is owned by Mobil Oil Corp. (Mobil). Additionally, Lacy states that it had previously entered into an operating agreement with La Gloria Corp. whereby La Gloria would be operator of the subject units. Afterwards La Gloria executed a gas sale contract with Texas Eastern Transmission

Corp. on December 1, 1947. Lacy was not a party to the gas sale contract. Subsequently, Mobil succeeded La Gloria Corp. in interest in Docket No. G-3973 with respect to the sale of gas from Abney Unit No. 1 and the Abney Unit No. 2 to Texas Eastern Transmission Corp. (Texas Eastern).

Prior to Mobil becoming a successor in interest to La Gloria, Lacy attempted to file the gas sale contract between La Gloria and Texas Eastern as its own rate schedule. The Commission rejected Lacy's proposed rate schedule by means of a letter order dated December 9, 1955, stating, among other things, that the "* * * basic contract referred to above can only be amended by the parties therto and as a rate schedule, must be made to operate alike as to all parties whose gas is sold subject to its provisions."

Later Mobil filed an application in Docket No. G-3973 to abandon the sale of gas from depths of 7,000 feet and below from the two subject units; Mobil stated that it was unproductive to produce gas from the 7,000 feet or below level. On September 26, 1974, the Commission issued an order permitting amendment of Mobil's certificate to delete all non-productive depths below 7,000 feet.

It is Lacy's position that the Commission's order of September 26, 1974, amending Mobil's certificate by deleting all non-productive depths below 7,000 feet relative to the Abney Unit No. 1 and Abney Unit No. 2, also applies to its undivided half interest in the subject units, primarily because of the language used by the Commission in a letter order, dated December 9, 1955, rejecting Lacy's proposed rate schedule.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of pracitce and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission' rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20356 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. CP78-402]

## MICHIGAN WISCONSIN PIPE LINE CO.

### Application

JULY 14, 1978.

Take notice that on June 27, 1978, Michigan Wisconsin Pipe Line Co. (applicant), One Woodward Avenue, Detroit, Mich. 48226, filed in Docket No. CP74-402 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing applicant to provide gas transportation services for Panhandle Eastern Pipe Line Co. (Panhandle) and Columbia Gas of Ohio, Inc. (Columbia), and incident therewith to construct and operate additional compressor facilities at its existing Defiance Compressor station located in Defiance County, Ohio, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by order issued December 9, 1977, in Docket No. CP77-274, Michigan Consolidated Gas Co.—Interstate Storage Division (Consolidated) was authorized to provide up to 12,400,000 Mcf of natural gas storage service for Panhandle on behalf of certain of Panhandle's customers. The service is presently being provided pursuant to two gas storage agreements, the first providing for annual storage of up to 6,000,000 Mcf to be redelivered by Consolidated during peak winter periods (the 100 day service), and the second providing for annual storage of up to 6,400,000 Mcf to be redelivered by Consolidated during off-peak winter periods. The application further indicates that by an amendment to the gas storage agreement dated February 1, 1978, Panhandle and Consolidated have amended the 100 day service agreement to provide for additional annual storage of 6,250,000 Mcf of gas. In addition, the application indicates that pursuant to a gas storage agreement dated March 1, 1978 between Consolidated and Columbia, Consolidated has also agreed to provide storage for an annual volume of 2,750,000 Mcf for the account of Columbia.

Incident to the storage service to be provided by Consolidated for Panhandle, applicant requests authorization to provide a transportation service for Panhandle in accordance with the terms and conditions set forth in a transportation agreement dated February 17, 1978, between Panhandle, applicant, and Consolidated. Applicant states that the agreement provides that between March 1, and October 31 (the summer period) of each year during the term of the agreement that Applicant would receive, transport and make deliveries of up to 6,250,000 Mcf to Consolidated for the account of Panhandle. Correspondingly, during the period from November 1 through March 31 (the winter period) of each year during the term of the agreement, applicant states that it would make redeliveries of the stored volumes to Panhandle for the account of Consolidated. Applicant further states that the agreement provides that during the summer period Panhandle would make the deliveries to applicant at a daily rate of up to 31,250 Mcf of natural gas at an existing point of interconnection of the pipeline systems of applicant and Panhandle located in Noble Township, Defiance County, Ohio (the Defiance Interconnection), and that, during each winter period, applicant would make daily redeliveries to Panhandle at the Defiance Interconnection at such rate as Panhandle may request in accordance with either its 100 day or off-peak storage service agreements but not in excess of 182,500 Mcf per day. It is indicated, that as consideration for providing the transportation service, applicant would charge Panhandle a rate of $23,541 per month payable each month during the term of the agreement which is set to terminate on April 1, 1984.

Incident to the storage service to be provided by Consolidated for Columbia, applicant states that it further requests authorization to provide a transportation service for Columbia in accordance with the terms and conditions set forth in a transportation agreement dated March 1, 1978, between applicant and Columbia. Applicant states that this agreement provides for the summer period receipt, transportation, and delivery to Consolidated, and the winter period redelivery of Columbia's annual 2,750,000 Mcf of storage gas. Applicant further states that article I of the agreement provides that Columbia would cause Panhandle to make deliveries to applicant during each summer period at a daily rate of up to 13,750 Mcf of natural gas. It is indicated that the point of delivery for such supplies is also at the Defiance Interconnection. From such point, the agreement provides that applicant would transport and make deliveries of equivalent volumes to Consolidated at applicant's Willow Run meter station located in Ypsilanti township, Washtenaw County, Mich. Correspondingly, during each winter period during the term of the agreement, applicant states that it would make daily redeliveries to Panhandle at the Defiance Interconnection for the account of Columbia at such rate as Columbia may request in accordance with its storage service agreement with Consolidated, but not in excess of 27,500 Mcf per day. As consideration for pro-

viding this transportation service, applicant states that it would charge Columbia a rate of $10,358 per month payable each month during the term of the agreement.

It is further indicated that to effectuate receipt during the summer period of the gas delivered from Panhandle for its account and for the account of Columbia at the Defiance Interconnection, that applicant proposes to install a 1,000 horsepower compressor unit at the Defiance Compressor Station. Applicant estimates that the cost of the additional unit would be $899,830, which cost would be financed from funds on hand, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20349 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. ID-1849]

JAMES J. MILLER

Application

JULY 14, 1978.

Take notice that on June 22, 1978, James J. Miller (applicant), filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director and president, Beebee Island Corp., public utility.
Senior vice president, Niagara Mohawk Power Corp., public utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.19 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before August 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20347 Filed 7-21-78; 8:45 am]

[6704-02]

[Docket Nos. CI62-825 and CI65-1355; Rate Schedule Nos. 312 and 377]

MOBIL OIL CORP.

Petition for Declaratory Order

JULY 17, 1978.

Take notice that on October 17, 1977, Mobil Oil Corp. (petitioner), Three Greenway Plaza East, Suite 800, Houston, Tex. 77046, filed in docket Nos. CI62-825 and CI65-1355 a petition for a declaratory order pursuant to section 1.7(c) of the Commission's rules of practice and procedure (18 CFR § 1.7(c)). On April 13, 1978, Mobil filed a supplement to its original petition.

Petitioner, a natural-gas company, proposes to sell natural gas to certain of its lessors for use as engine fuel in the operation of irrigation pumps and for other agricultural purposes. The leases between petitioner and some of its lessors are subject to gas purchase agreements between petitioner and El Paso Natural Gas Co. El Paso does not object to the proposed sales. Mobil requests a declaratory order recognizing the expressed reservation in the said gas purchase agreement to sell its lessors gas for use as engine fuel in the operation of irrigation pumps and for agricultural purposes requiring the use of natural gas for engine fuel.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a paraty in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20350 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. RI78-56]

MORGAS

Petition for Special Relief

JULY 14, 1978.

Take notice that on April 24, 1978, Morgas (petitioner), 2506 West 45th Street, Amarillo, Tex. 79109, filed a petition for special relief in docket No. RI78-56 pursuant to section 2.76 of the Commission's rules.

Petitioner seeks authorization to charge the increased rate of $2.25 per Mcf for the sale of gas from East Panhandle gas field. As justification for the proposed rate increase, Petitioner states that it proposes to drill and complete seventeen new wells, to rework and add new equipment to thirteen of the twenty-one existing wells in the field, and to repair its gathering system, all at a total capital expense of $1,195,573.00. Further, petitioner states that if relief is not granted it will be forced to plug its existing wells and junk out its gathering system. Currently, petitioner sells gas to Transwestern Pipeline Co. at a rate of 26 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed

with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20351 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RP74-100, *et al.*]

**NATIONAL FUEL GAS SUPPLY CORP.**

**Proposed PGA Rate Adjustment**

JULY 13, 1978.

Take notice that on June 29, 1978, National Fuel Gas Supply Corp. (National) tendered for filing as part of its FERC Tariff, Original Volume No. 1, Nineteenth Revised Sheet No. 4, proposed to be effective August 1, 1978.

National states that the purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provisions in section 17 of the general terms and conditions and to establish a special refund credit to be effective August 1, 1978 through July 31, 1979. National further states that such tariff sheet reflects an adjustment in National's rates of (8.90¢) per Mcf on Nineteenth Revised Sheet No. 4.

It is stated that copies of the filing have been mailed to all of its jurisidictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 26, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20352 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RM77-14]

**NORTHERN NATURAL GAS CO.**

**Proposed Addition to FERC Gas Tariff**

JULY 13, 1978.

Take notice that Northern Natural Gas Co. (Northern) on June 30, 1978, submitted for filing tariff sheets incorporating the deferred billing GRI payments, paragraph 19.5 for its FERC Gas Tariff, volume No. 1 and paragraph 2.5 for volume No. 2. Northern's prior GRI tariff filing in April of 1978 only contained reference to this procedure in letter form only. Northern states that its filing is in compliance with the Commission's order issued June 1, 1978 in this docket.

The tariff sheets are:

*Third Revised Volume No. 1*

Substitute Second Revised Sheet No. 72.
Original Sheet No. 73.
Original Sheet No. 74.

*Original Volume No. 2*

Substitute Original Sheet No. 1j.
Original Sheet No. 1k.
Original Sheet No. 1L.

Northern states that copies of its filing were served on all jurisdictional customers and affected State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20353 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RI78-24]

**NORTHERN PUMP CO.**

**Amended Petition for Special Relief**

JULY 14, 1978.

Take notice that on May 22, 1978, Northern Pump Co. (petitioner), 1915—57th Avenue North, Minneapolis, Minn. 55430, filed an amended petition for special relief in docket No. RI78-24 which amends its original petition, filed January 11, 1978. In its original petition, petitioner requested authorization to charge a total rate of 91.5940 cents per Mcf at 14.65 psia for the sale of its gas to Northern Natural Gas Co. from the Becker No. 1 Well, Hugoton Field, Finney County, Kans. Now, in its amended petition, petitioner seeks approval to charge the reduced total rate of 78.07 cents per Mcf at 14.65 psia for the sale of its gas to the above-named purchaser from the above-named well.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20354 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket Nos. EL78-15 and ER78-339]

**PUBLIC SERVICE CO. OF NEW HAMPSHIRE**

**Order Clarifying and Modifying Previous Orders in Part and Denying Rehearing**

JULY 17, 1978.

Applications for rehearing and motions for clarification of the Commission's orders of May 26, 1978[1] and June 9, 1978[2] in the above captioned dockets have been filed by: New Hampshire Electric Cooperative, Inc., the towns of Ashland and Wolfsboro, N.H., and the village precinct of Hew Hampton, N.H. (customers); the New Hampshire Legislative Utilities Consumers' Council (LUCC); and Concord Electric Co. and Exeter & Hampton Electric Co. (companies).

The customers, LUCC and the companies have requested clarification and modification of the procedural schedule in these dockets. For purposes of clarification, our June 9, 1978

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[1]Docket No. ER78-339; Order accepting rates for filing, suspending rate increase, rejecting motions, establishing procedures and allowing interventions.

[2]Docket Nos. EL78-15 and ER78-339; order granting and denying motions in part, consolidating proceedings and establishing procedures.

order established consolidated phased proceedings. As stated therein, phase I will deal with evidence required to substantiate PSNH's financial hardship claim for CWIP in rate base and evidence on the allowable rate of return; phase II will commence after a final order on rehearing has been issued in phase I and will deal with all remaining issues. In so fashioning the phased procedure it was our intent that the top sheet date previously set in the May 26, 1978 order be suspended. The administrative law judge shall be granted the authority to establish a new top sheet date consonant with the phased procedure.

Additionally, the June 9, 1978 Order instructed the administrative law judge to establish dates that would permit the issuance of an initial decision within this calendar year. The customers and the LUCC have requested an extension of that time period. Without reaching the merits of these requests we believe that the administrative law judge can most appropriately decide whether a limited extension of time in phase I is warranted. In order that the issues in phase I may be expeditiously resolved the administrative law judge shall be granted the discretion to extend the time period previously established up to 6 weeks.

Our review of other issues and requests for relief raised by the various pleadings indicates that no new issues of fact or law have been raised which warrant modification of our previous orders of May 26 and June 9, 1978.

The Commission finds: (1) Good cause exists to grant the administrative law judge the authority to establish a new top sheet date.

(2) Good cause exists to grant the administrative law judge the discretion to extend the time period in phase I up to 6 weeks.

(3) Good cause exists to deny the applications for rehearing.

The Commission orders: (A) The administrative law judge is hereby granted the authority to establish a new top sheet date in docket Nos. EL78-15 and ER78-339.

(B) The administrative law judge is hereby granted the discretion to extend the time period in phase I of dockets No. EL78-15 and ER78-339 up to 6 weeks.

(C) The customers', LUCC's and the companies' applications for rehearing are denied.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20355 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. ER78-283]

## SOUTH CAROLINA ELECTRIC & GAS CO.

### Order Accepting Rates for Filing, Suspending Rate Increase, Allowing Interventions, and Establishing Procedures

JULY 14, 1978.

On June 14, 1978, South Carolina Electric & Gas Co. (SCEG) tendered for filing a proposed rate increase applicale to sale for resale service to three mumicipals, five rural electric cooperatives and one public power body.[1] SCEG requests waiver of the Commission's notice requirements to allow for an effective date of April 30, 1978, for the proposed rate increase. SCEG's case-in-chief is based on a 12-month test period ending December 31, 1978. The proposed rates would result in increased revenues of approximately $2,256,976 (13.13 percent) for estimated sales for the year ending April 30, 1979, the first full year under the proposed rates.

Notice of the filing was issued on April 5, 1978, with protests or petitions to intervene due on or before April 17, 1978. On April 18, 1978, the city of Orangeburg, the town of McCormick, the town of Winsboro, Saluda Electric Cooperative, Inc., Berkeley Electric Cooperative, Inc., Little River Electric Cooperative, Inc., Palmetto Electric Cooperative, Inc., and Broad River Electric Cooperative Inc. (petitioners), all located in South Carolina, tendered for filing petitions to intervene. In support of their petitions the petitioners state that they each purchase power at wholesale from SCEG and resell it at retail to their customers. The petitioners contend that the magnitude of the proposed rate increase warrants maximum suspension of, and a formal hearing on, the proposed rates. The petitioners allege price-squeeze stating that the rates proposed by SCEG have the effect of increasing the wholesale case of electricity above the level of SCEG's retail industrial rate, with concomitant injury to competition at the retail level and grave disadvantage to the petitioners in seeking to serve large retail customers.

On May 1, 1978, SCEG filed an answer to the petitioners' allegations denying the assertions of excessive rate increase and price-squeeze and requesting that suspension, if any, be limited to one day. SCEG's answer states that the continuing increase in demand for electricity on SCEG's system and the operation of new facilities to meet this demand justify the proposed rate increase.

Our review indicates that the rates filed by SCEG have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Therefore, the Commission will accept SCEG's submittal for filing and suspend the proposed rates and services for 4 months after which they will go into effect as of November 15, 1978, subject to refund, and a hearing shall be held to consider the justness and reasonableness of the proposed rates and services.

The Commission finds that participation by the petitioners in this proceeding may be in the public interest. Accordingly, the Commission will grant the petitioners' untimely petition to intervene pursuant to section 1.8 (d) of the Commission's rules of practice and procedure.

The petitioners contend that the proposed rate increase creates a discriminatory price-squeeze. *Conway Corp.* v. *F.P.C.*, 510 F. 2d 1264 (1975), aff'd, *F.P.C.* v. *Conway Corp.*, et al. 426 U.S. 271 (1976). Pursuant to the procedural policy set forth in order no. 563, and in 18 CFR 2.17, we shall order the convening of a prehearing conference by the presiding administrative law judge within 15 days from the date of the issuance on this order for the purpose of hearing the petitioners' requests for data on the price-squeeze issue.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402 (a) of the DOE Act and by the Federal Power Act, particularly sections 205, 206, 301, 307, 308 and 309 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates and services proposed by the South Carolina Electric & Gas Co.

(B) The rates and services proposed by SCEG are hereby accepted for filing and suspended for four months after which they will go into effect on November 15, 1978, subject to refund.

(C) The petitioners, City of Orangeburg, the town of McCormick, the town of Winsboro, Saluda Electric Cooperative, Inc., Berkeley Electric Cooperative, Inc., Little River Electric Cooperative, Inc., Palmetto Electric Cooperative, Inc., and Broad River Electric Cooperative, Inc., are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* That participation by such intervenors shall be limited to matters

[1] SCEG's original filing, tendered March 31, 1978, was deficient. By Secretary letters dated April 18, 1978 and May 24, 1978, SCEG was notified of deficiencies in its filings. Such deficienies were cured on June 14, 1978.

set forth in their respective petitions to intervene; and *Provided further*, That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) The staff shall prepare and serve top sheets on all parties on or before October 20, 1978.

(E) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose (see, Delegation of Authority, 18 CFR Section 3.5(d)), shall convene a conference in the proceeding to be held within ten (10) days after the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said law judge is authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever and motions to dismiss), as provided for in the Commission's rules of practice and procedure.

(F) The presiding administrative law judge shall convene a prehearing conference with 15 days from the date of this order for the purpose of hearing the petitioners' request for data required to present its case on the price-squeeze issue.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20357 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RI78-45]

**T.E.L. OIL AND GAS CORP.**

**Petition For Special Relief**

JULY 14, 1978.

Take notice that on March 23, 1978, T.E.L. Oil & Gas Corp. (petitioner), 125 North Roosevelt, Box 292, Guymon, Okla. 73942, filed a petition for special relief in Docket No. RI78-45 pursuant to section 2.76 of the Commission's rules. Petitioner seeks authorization to charge 72.06098 cents per Mcf for the sale of gas to Panhandle Eastern Pipe Line from the Halsell No. 1 Well, Texas County, Okla. Currently petitioner sells gas at the rate of 32.000 cents per Mcf. Petitoner states that due to increased operation and maintenance costs, as exacerbated by inflation, it is uneconomical to operate the well, selling the gas at the present rate.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20358 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RP76-99]

**TENNESSEE NATURAL GAS LINES, INC.**

**Further Extension of Time**

JULY 14, 1978.

On June 29, 1978, Tennessee Natural Gas Lines, Inc., filed a request for a further extension of time to comply with ordering paragraphs (B), (C), and (D) of the Commission's opinion No. 8, issued February 21, 1978, in the captioned proceeding. A previous extension of time was granted by notice issued May 11, 1978. The instant motion states that staff counsel supports the request for further extension.

Upon consideration, notice is hereby given that a further extension of time is granted to and including July 31, 1978, within which Tennessee Natural Gas Lines, Inc., shall make the filings required by ordering paragraphs (B), (C), and (D) of opinion No. 8.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20359 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RI78-65]

**TEXACO, INC.**

**Petition for Authorization To Collect Increased Rates and for Waiver of Regulations**

JULY 14, 1978.

Take notice that on May 25, 1978, Texaco, Inc. (Petitioner), P.O. Box 52332, Houston, Tex. 77052 filed a petition for authorization to collect increased rates based on increased royalty payments and for a waiver of regulations. Petitioner seeks this increase in its rates for the sale of gas from the L. A. Miller No. 1 Well, 800 RA SU A (Unit A), Little Pecan Lake Field, Cameron Parish, La. to the purchaser, Columbia Gas Transmission Co. Petitioner states that all of the leases from which petitioner derives its interest in unit A contain royalty clauses providing that the royalty on gas produced and sold shall be calculated by the lessee on the current market price of the gas at the wells of ⅛ of the gas so sold. Petitioner states that it has been paying a royalty to the lessors for natural gas produced in unit A based on the price of gas which petitioner charges in its sales; this price is subject to the jurisdiction of the Federal Energy Regulatory Commission. According to petitioner, the lessors are caiming a substantially higher royalty than petitioner has been paying based on the higher price of gas produced in unit A which producers other than petitioner have been charging in sales which are not subject to the jurisdition of the Federal Energy Regulatory Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or the participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20360 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. CP78-408]

**TEXAS GAS TRANSMISSION CORP. ET AL.**

**Application**

JULY 14, 1978.

Take notice that on June 30, 1978, Texas Gas Transmission Corp. (Texas Gas), P.O. Box 1160, Owensboro, Ky. 42301, Western Kentucky Gas Co. (Western), 100 St. Ann Street, Owensboro, Ky. 42301, National Pipeline Co. (National), 2900 Grant Building, Pittsburgh, Pa. 15219, and Orbit Gas Co. (Orbit), Suite 1509, Citizens Plaza Building, Louisville, Ky. 40202, (applicants) filed in Docket No. CP78-408 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and

necessity authorizing Applicants to participate in a temporary transportation arrangement, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Texas Gas' Herbert-Cannelton 8-inch pipeline extending from the interconnection of its 6-inch pipeline in Ohio County, Ky., approximately 13 miles northward to the southern bank of the Ohio River in Hancock County, Ky., has or will soon become physically deteriorated or obsolete to the extent that the reconditioning of the line is deemed necessary, and that Texas Gas, therefore, proposes to recondition such line this summer, beginning approximately July 1, 1978. Such reconditioning would be performed in accordance with the provisions of section 2.55(b) of the Commission's General Policy and Interpretations (18 CFR 2.55(b)), it is said. It is indicated that in order to recondition such line, Texas Gas has made temporary arrangements for the transportation of gas, all within the commonwealth of Kentucky, through the assistance of parties not presently subject to the jurisdiction of the Commission (Western, Orbit, and National).

It is further indicated that Western, National and Orbit would transport and deliver volumes of natural gas for Texas Gas' account up to 30,000 Mcf per day for a period of approximately 60 days during the time the necessary reconditioning work is being done on the Herbert-Cannelton line, and that the city of Lewisport, Ky. (Lewisport), a municipal utility serving the total natural gas requirements of Lewisport and its environs, would also transport and deliver volumes of natural gas for Texas Gas' account during the reconditioning period. It is stated that the transportation and delivery of natural gas would be effectuated among the parties as follows:

(A) Texas Gas would deliver the volumes of natural gas up to 30,000 Mcf per day, which volumes ordinarily flow through the Herbert-Cannelton line, to Orbit at the interconnection of Texas Gas' 12-inch Slaughters-Greenville pipeline and the 12-inch pipeline owned by National and operated by Orbit in Hopkins County, Ky.

(B) Orbit would transport the volumes received from Texas Gas and deliver such volumes to either Western or Lewisport at the interconnection of the facilities of National's 12-inch pipeline and Western's 6-inch pipeline in Hancock County, Ky., or at the interconnection of National's 12-inch pipeline and Lewisport's facilities in Hancock County, Ky.

(C) Western would redeliver the volumes received from Orbit to Texas Gas at the interconnection of Western's 6-inch pipeline and Texas Gas' Herbert-Cannelton 8-inch pipeline in Hancock County, Ky., and Lewisport would redeliver the volumes received from Orbit to Texas Gas at the interconnection of Lewisport's pipeline and Texas Gas' Herbert-Cannelton pipeline in Hancock County, Ky.

Applicants state that this proposal is the only means of permitting Texas Gas to maintain continual service during the reconditioning period to its existing customers served from the Herbert-Cannelton line.

It is stated that in order to effectuate the above-described proposal, it would be necessary to construct and install temporary facilities as follows:

(A) Approximately 1,500 feet of temporary pipeline and related metering and regulating facilities at the interconnection of Texas Gas' 12-inch Slaughters-Greenville pipeline and National's 12-inch pipeline in Hopkins County, Ky.

(B) Approximately 1,000 feet of temporary pipeline and related metering facilities extending from National's 12-inch pipeline to Texas Gas' facilities in the East Diamond area, located in Hopkins County, Ky. The construction of the temporary pipeline is necessary in order to permit Orbit to receive its low-pressure gas from the East Diamond field, and thus allow it to maintain service to its existing customers during the reconditioning period.

It is indicated that Texas Gas would operate and pay for the cost of all the temporary facilities. The estimated total cost of such facilities is $60,000, it is said. Applicants state that all of the temporary facilities would be immediately removed and returned to stock as soon as the reconditioning work is completed. It is indicated that Texas Gas would furnish all compressor fuel needed in this proposal, and any gas which may be lost or unaccounted for.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20361 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. CP78-406]

## TRANSCONTINENTAL GAS PIPE LINE CORP.

### Application

JULY 14, 1978.

Take notice that on June 29, 1978, Transcontinental Gas Pipe Line Corp. (applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-406 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing applicant to render approximately 1.3 million dekatherms (dt) equivalent to temporary natural storage service to its customers during the 1978-79 winter season at its Hester storage field, located in St. James Parish, La., which field has available approximately 3,300,000 dt of authorized but unallocated capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed storage service would be subordinate to its obligations under the storage and exchange agreement between applicant and Mid Louisiana Gas Co. in the Hester field, and would also be subordinate to applicant's system flexibility requirements associated with the Hester field. It is said that injections into storage are contemplated to commence upon receipt of the requisite authorization and continue until

November 1, 1978, and that withdrawals are to commence at that time and shall terminate March 31, 1979, but may continue for an additional 15 days if necessary to effectuate redelivery of the temporary storage quantities.

Applicant proposes to charge a rate of 30.0 cents per dt for the temporary storage service, which rate is divided equally into injection and withdrawal charges, and applicant shall be provided a total of 2 percent of the quantities as fuel, it is said.

Applicant states that the storage service proposed herein is required to assist its customers to protect the high priority winter period markets on their respective systems.

Customers desiring this temporary storage service and the proposed storage quantity for each customer are as follows:

| Customer | Storage quantity (dt) |
|---|---|
| City of Alexander City, Ala | 50,000 |
| CNG Transmission Co | 100,000 |
| City of Danville, Va | 40,000 |
| Eastern Shore Natural Gas Co | 175,000 |
| City of Greenwood, S.C | 60,000 |
| City of Laurens, S.C | 30,000 |
| City of Lawrenceville, Ga | 20,000 |
| City of lexington, N.C | 50,000 |
| City of Monroe, Ga | 30,000 |
| City of Shelby, N.C | 22,000 |
| Union Gas Co | 700,000 |
| Total | 1,277,000 |

Any person desiring to be heard or to make any protest with reference to said application should on or before August 8, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, prusuant to the authority contained in and subject to the jurisidiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20362 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket Nos. AR70-1, et al.]

## TRANSWESTERN PIPELINE CO., ET AL.

### Filing of Pipeline Refund Reports and Refund Plans

JULY 13, 1978.

Take notice that the pipelines listed in the appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before July 28, 1978. Copies of the respective filings are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

APPENDIX

| Filing date | Docket No. | Company | Type filing |
|---|---|---|---|
| June 15, 1978 | AR70-1 | Transwestern Pipeline Co | Plan. |
| June 19, 1978 | CP77-40 | El Paso Natural Gas Co | Report. |
| June 15, 1978 | AR70-1 | El Paso Natural Gas Co | Plan. |
| June 26, 1978 | G-9547, et al. | United Gas Pipe Line Co | Do. |
| July 6, 1978 | AR61-2 | Columbia Gas Transmission Corp. | Do. |

[FR Doc. 78-20338 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket Nos. RP71-29 and RP71-120 (Phase II)]

## UNITED GAS PIPE LINE CO.

### Order Establishing Oral Argument

JULY 13, 1978.

On June 28, the State of Louisiana filed a renewal of its motion for oral argument on issues related to the formulation of a permanent curtailment plan for United Gas Pipe Line Co. ("United").[1] Responses in support of the present motion have been received from several parties who are directly served by United.[2]

Because of the significance and complexity of the matters in controversy, it is appropriate to hold oral argument strictly limited to three areas of principle concern to the members of this Commission:

(1) To what extent are the direct market customers[3] solely dependent upon United for their energy needs and to what extent should that dependence, if any, be reflected in the structure of a permanent curtailment plan for United?

(2) Whether gas used for industrial process uses should be given separate, high-priority treatment, and, if so, how should such requirements be defined?

What additional data if any are needed before a permanent plan can be approved and/or implemented? How long will it take to develop the data, and in what form should the data be developed? If more data is required for permanent plan, what interim plan should be adopted?

[1] See "order deferring determinations on motions to strike and supplemental motions to strike and denying motions for oral argument", issued September 25, 1977.

[2] Entex, Inc. and Louisiana Gas Service Co. (June 29, 1978): United Municipal Distributor's Group (June 29, 1978): American Sugar Cane League (July 3, 1978); Allied Paper Inc., Monsanto Co., and Texasgulf, Inc. (July 5, 1978); Mobile Gas Service Corp., and Clarke-Mobile Counties Gas District (July 11, 1978).

[3] Customers served directly by United or are resale customers of distributors served by United.

The oral argument will be divided into three phases corresponding to these areas. Each spokesman will address the Commission three separate times, each time speaking on one of the three enumerated areas of concern. The Commission may make a limited period of time available to those parties who seek to address other issues.

We perceive a similarity of interest among several groups of participants. In order to best use the Commission's time, we reserve the right to limit participation in the oral argument to avoid repetitive presentations. Parties having similar positions on issues should consolidate their positions and make a collective appearance through the use of a single spokesman.[4]

In order to assist in focusing our attention on the portions of the record relevant to the three areas, written statements will be required to be filed by those participants in advance of the oral argument. These statements will be limited in scope to the three areas and shall be organized to address the three areas in the order set forth above. Arguments and assertions of fact in these statements shall be indexed to briefs, to the initial decision, and to the record by the use of footnotes in the written statements. We emphasize that these statements are not to be additonal briefs but are to assist the Commission in the oral argument.

The Commission finds: It is in the public interest to hold oral argument in this proceeding limited in the manner set forth above.

The Commission orders: (A) Oral arguments in this proceeding shall be held in Hearing Room A, 825 North Capitol Street, Washington, D.C., at 9 a.m. on July 28, 1978.

(B) Requests to participate in the argument accompanied by written statements of position in the form described above shall be filed on or before noon of July 24, 1978.

By the Commission.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20363 Filed 7-21-78; 8:45 am]

[4]Our tentative view is that participation should be limited to a representative from each of the following groupings: (1) United; (2) distributors served directly by United; (3) State of Louisiana; (4) directly served powerplant customers; (5) interstate pipelines and their customers not directly served by United; (6) directly served industrials; and (7) Commission staff.

[6740-02]

[Docket No. RP78-79]

## UNITED GAS PIPE LINE CO.

### Filing of Revised Tariff Sheets

JULY 13, 1978.

Take notice that on July 5, 1978, United Gas Pipe Line Co. (United) tendered for filing with the Federal Energy Regulatory Commission (Commission) the tariff sheets listed below to its FERC Gas Tariff, original volume No. 2.

First Revised Sheet No. 649.
First Revised Sheet No. 683.
First Revised Sheet No. 750.
First Revised Sheet No. 768.
First Revised Sheet No. 831.
First Revised Sheet No. 847.
First Revised Sheet No. 863.
First Revised Sheet No. 879.
First Revised Sheet No. 923.
First Revised Sheet No. 954.
First Revised Sheet No. 1015.
First Revised Sheet No. 1051.
First Revised Sheet No. 1069.

United states that the purpose of this filing is to show increased volume for fuel and unaccounted for gas provided in article II of certain of United's transportation agreements. The proposed effective date of these sheets is April 1, 1978.

United states that copies of these tariff sheets have been mailed to all transportation customers affected by this change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 26, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20364 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. ER78-473]

## CENTRAL LOUISIANA ELECTRIC CO., INC.

### Short-Term Substitute Energy Sale

JULY 17, 1978.

Take notice that on July 5, 1978, Central Louisiana and Electric Co., Inc. (CLECO) tendered for filing a letter agreement dated May 29, 1978, covering the sale of 320,000 MWH to Louisiana Power & Light Co. (LP&L) for four (4) months beginning June 1, 1978. CLECO states that LP&L desires to purchase the energy for its system needs and CLECO agrees to provide the required energy from its large reheat generating units and that the agreement enabling the alternate use of existing generating facilities by the parties will benefit both systems. CLECO further states that deliveries will be made over existing interconnection facilities.

CLECO requests an effective date of June 1, 1978, and therefore requests wavier of the Commission's notice requirements.

According to CLECO copies of this filing have been sent to LP&L.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8, 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20413 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket Nos. CP71-68, et al.]

## COLUMBIA LNG CORP., ET AL.

### Notice Changing Conference Date

JULY 17, 1978.

The conference date of July 18, 1978, previously announced by notice of July 6, 1978, has been changed. The conference will now be held on Monday, July 24, 1978, at 1:30 p.m. in Room 3200, North Building, 941 North Capitol Street, Washington, D.C. 20426. The conference will discuss a

proposal to increase liquefied natural gas deliveries at Cove Point, Md.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20414 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. ER78-472]

**FLORIDA POWER CORP.**

**Filing**

JULY 18, 1978.

Take notice that on July 5, 1978, Florida Power Corp. (Florida Power) tendered for filing a contract for interchange service (contract) between Florida Power and the city of Vero Beach, Fla. Florida Power states that the contract provides for economy energy interchange service. Florida Power requests that the contract, in accordance with its terms, be permitted to become effective August 15, 1978.

Florida Power further states that copies of the contract were served upon the city of Vero Beach and the Florida Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 26, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20415 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. ER78-478]

**FLORIDA POWER & LIGHT CO.**

**Filing**

JULY 18, 1978.

Take notice that Florida Power & Light Co. (FP&L), on July 10, 1978, tendered for filing as an initial rate an agreement executed only by it, entitled "Agreement To Provide Specified Transmission Service Between Florida Power & Light Co. and Lake Worth Utilities Authority." FP&L states that under the agreement, FP&L will transmit power and energy for the Lake Worth Utilities Authority (LWUA) as is required by LWUA in the implementation of its interchange agreements with the Orlando Utilities Commission, Tampa Electric Co., Florida Power Corp., Fort Pierce Utilities Authority, the city of Homestead, and the Utilities Commission of the city of New Smyrna Beach, Fla.

FP&L requests an effective date for this agreement of no later than 30 days after the date of filing. According to FP&L, copies of this filing were served on the utilities director of the LWUA.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 28, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20416 Filed 7-21-78; 8:45 am]

[6740-02]

[Docket No. CP78-405]

**MONTANA POWER CO.**

**Application**

JULY 14, 1978.

Take notice that on June 28, 1978, Montana Power Co. (applicant), 40 East Broadway, Butte, Mont. 59707, filed an application pursuant to section 7(c) of the Natural Gas Act and section 2.70(b)(3) of the Commission's general policy and interpretations (18 CFR 2.70) for a certificate of public convenience and necessity requesting:

(1) authorization to sell to Northern Natural Gas Company (Northern) up to 17,500 Mcf (at 14.73 psia) of natural gas per day for a period of two years pursuant to an agreement between applicant and Northern dated June 8, 1978;

(2) that the Commission waive its accounting and reporting requirements with respect to applicant for the term of the certificate, provided that applicant would report the volumes of gas sold and the price paid for the gas; and

(3) that the facilities of, and transportation and sales by suppliers of gas to applicant, including but not limited to any producers, and all of the existing facilities of, and transportation and sales by applicant with the exception of the proposed sale to Northern and the related interconnecting facilities remain exempt from Commission jurisdiction.

These proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the gas to be sold by applicant would be available because of sufficient volumes imported from Canada. Applicant further states that it would sell such gas to Northern at a rate of $2.25 per Mcf. Said rate would be increased, applicant continues, if the border price at which it purchases the gas from Canadian sources is increased, provided that, Northern would have the right to terminate the gas purchase contract at the time of such increase.

The gas would be delivered at Hill County, Montana, and at a point on Northern's existing 16-inch pipeline extending from the Blaine County No. 1 compressor stations to the Canadian-U.S. border, it is indicated.

Applicant asserts that the additional volumes which would be the subject of this sale are needed on Northern's system to help maintain deliveries of gas to its existing customers and thereby avoid deeper curtailment.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own

review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20417 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ER78-481]

**NEW BEDFORD GAS & EDISON LIGHT CO.**

**Filing**

JULY 18, 1978.

Take notice that on July 10, 1978, New Bedford Gas & Edison Light Co. (New Bedford) filed, pursuant to section 205 of the Federal Power Act and the implementing provisions of section 35.13 of the Commission's regulations thereunder as adopted by the Federal Energy Regulatory Commission (FERC) by the saving provisions of section 705(a) of the Department of Energy Organization Act, an amendment to its currently effective rate schedule FERC No. 26.

New Bedford states that by the tendered amendatory agreement, New Bedford proposes to extend the expiration date of its currently effective rate schedule FERC No. 26 from May 31, 1978, to October 31, 1978, and to make available to the electric light department of the town of Braintree, Mass., certain quantities of capacity and related energy from New Bedford's entitlement in Canal Electric Co. unit No. 2.

New Bedford requests that the Commission's notice requirements be wavied pursuant to section 35.11 of the Commission's regulations in order to allow said filing to become effective June 1, 1978.

Copies of this filing have been served by New Bedford upon buyer and the Massachusetts Department of Public Utilities, according to New Bedford.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 28, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20418 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. CP78-407]

**NORTHERN NATURAL GAS CO.**

**Application**

JULY 14, 1978.

Take notice that on June 30, 1978, Northern Natural Gas Co. (applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in docket No. CP78-407 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Panhandle Eastern Pipe Line Co. (Panhandle) for resale in the interstate market, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that in an effort to attach new gas supply sources to its system to replace diminishing gas reserves from traditional supply sources, applicant has entered into a gas purchase agreement dated July 19, 1976, as amended, with Mobil Oil Corp. (Mobil) for the purchase of 33⅓ percent of Mobil's interest in block 609, West Cameron area, offshore Louisiana.

In order to make such gas available to its system once it is delivered onshore by Columbia Gulf Transmission Co. (Columbia Gulf) at the terminus of the Blue Water project at Egan, La., applicant entered into a transportation and sale agreement dated March 1, 1978, with Panhandle and Trunkline Gas Co. (Trunkline), which agreement provides for the transportation of applicant's block 609 gas and the sale of up to 20 percent of such gas to Panhandle, it is stated. Applicant states that Trunkline would receive applicant's block 609 gas at either one or more of the following points: (1) A point of interconnection between the facilities of Columbia Gulf and Trunkline near Egan in Acadia Parish, La. (Egan), (2) the point of delivery of gas by Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Tennessee), for the account of applicant to Trunkline at its existing point of connection between the facilities of Tennessee and Trunkline in Jefferson Davis Parish, La. (Kinder), or (3) the point of delivery of gas by Trunkline at a point of connection between the facilities of Columbia Gulf and Trunkline in St. Mary Parish, La. (Centerville). It is indicated that Trunkline would transport such gas from the point of receipt to its Longville, La., compressor station located in Beauregard Parish, La. The gas would be transported from Trunkline's Longville compressor station to Northern's system by Trunkline and Panhandle pursuant to the terms of a transportation agreement between the parties dated September 24, 1976, it is stated.

As partial consideration for the transportation of applicant's offshore gas, Panhandle has a continuing option to purchase up to 20 percent of the volume of applicant's block 609 gas received by Trunkline, it is asserted. Applicant proposes to sell the gas to Panhandle for resale in interstate commerce at a monthly cost of service basis, which cost represents applicant's cost of gas at the point of delivery to Trunkline. It is indicated that the estimated average cost of service per Mcf for the first year of operation is $1.93.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20419 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ER78-475]

**NORTHERN STATES POWER CO.**

**Filing**

JULY 17, 1978.

Take notice that Northern States Power Co. (Northern States) on July 6, 1978, tendered for filing an interconnection and interchange agreement dated June 23, 1978, with Interstate Power Co.

Northern States indicates that the agreement provides for the inter- connected operation of the party's transmission systems at 15 points of interconnection as shown on exhibit A.

Northern States requests an effective date of August 2, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before July 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20420 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ER78-479]

**OKLAHOMA GAS & ELECTRIC CO.**

**Filing of Wholesale Electric Service Agreements**

JULY 17, 1978.

Take notice that Oklahoma Gas & Electric Co. (Oklahoma), on July 7, 1978, tendered for filing electric service agreements for wholesale service for the city of Edmond, Okla. Oklahoma states that the proposed electric service agreements cancel and supersede the existing contract presently on file with the Commission. The proposed effective date is August 8, 1978.

Oklahoma further states that the proposed rate is that accepted by the Commission for filing by letter-order issued March 16, 1978, in docket No. ER77-127 and designated as FERC electric tariff, 1st revised volume No. 1.

Oklahoma indicates that copies of the proposed electric service agreements have been mailed to Edmond, the Corporation Commission of the State of Oklahoma, and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public insepction.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20421 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ER78-474]

**PACIFIC POWER & LIGHT CO.**

**Initial Rate Filing**

JULY 17, 1978.

Take notice that Pacific Power & Light Co. (Pacific) on July 6, 1978, tendered for filing, in accordance with section 35.12 of the Commission's regulations, a new rate schedule for transmission of electric power and energy for Basin Electric Power Cooperative (Basin Electric), Rushmore Electric Power Cooperative, Inc. (Rushmore), and Tri-County Electric Association, Inc. (Tri-County).

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective May 1, 1978, which it claims is the date of commencement of service.

Copies of the filing were supplied to Basin Electric, Rushmore, and Tri-County, according to Pacific.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20422 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ER78-476]

**PUBLIC SERVICE CO. OF INDIANA, INC.**

**Proposed Tariff Change**

JULY 17, 1978.

Take notice that Public Service Co. of Indiana, Inc. (PSCI), on July 5, 1978, tendered for filing pursuant to the service agreement between Jackson County Rural Electric Membership Corp. and PSCI a fourth supplemental agreement.

PSCI states that said supplemental agreement provides for a new delivery point designated as the Cortland delivery point.

According to PSCI copies of this filing were served upon Jackson County Rural Electric Memership Corp.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before July 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20423 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. RP73-64 (PGA78-2) (DCA78-2)]

SOUTHERN NATURAL GAS CO.

Extension of Time

JULY 17, 1978.

On July 7, 1978, Southern Natural Gas Co. (Southern) filed a motion to extend the time for complying with ordering paragraph (E) of the Commission's June 30, 1978, order in the captioned proceeding. The motion states that Southern purchases gas from both United Gas Pipe Line Co. and Sea Robin Pipeline Co., and in order for Southern to be able to file revised rates as required by the June 30 order, United and Sea Robin will have to file revised rates for their most recent PGA filings. Southern also states that United and Sea Robin anticipate filing their revised PGA rates by mid-July.

Upon consideration, notice is hereby given that an extension of time is granted, and Southern shall file revised rates pursuant to ordering paragraph (E) of the June 30, 1978, order within 5 days after United and Sea Robin have filed their revised rates.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20424 Filed 7-21-78; 8:45 am]

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[6740-02]

[Docket No. ER78-480]

WISCONSIN POWER & LIGHT CO.

Filing

JULY 18, 1978.

Take notice that on July 10, 1978, Wisconsin Power & Light Co. (WP&L) tendered for filing a wholesale power contract dated June 6, 1978, between the city of Princeton, Wis., and WP&L. WP&L states that this contract will supersede an existing contract for wholesale electric service dated October 3, 1967, and designated WP&L rate schedule No. 68.

WP&L requests an effective date of October 21, 1977, and therefore requests waiver of the Commission's notice requirements.

According to WP&L copies of this filing have been provided to the city of Princeton and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 28, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-20425 Filed 7-21-78; 8:45 am]

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[3128-01]

Office of Energy Research

HIGH ENERGY PHYSICS ADVISORY PANEL

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the High Energy Physics Advisory Panel will meet Tuesday, August 8, 1978, at 9:30 a.m., in the Orange Room of the Central Laboratory Building at the Stanford Linar Accelerator Center (Stanford University) located in Stanford, Calif.

The purpose of the panel is to provide advice and guidance on a continuing basis with respect to the high energy physics research program.

The tentative agenda is as follows:

1. The report of the HEPAP subpanel on the future of the high energy physics program at Argonne National Laboratory
2. Long range planning and projections
3. Status of the fiscal year 1979 budgets for the Department of Energy and National Science Foundation programs in high energy physics
4. Recent initiatives in high energy physics research by Japan and by the People's Republic of China
5. The developmental support of young investigators in high energy physics research
6. Public comment (10 minute rule).

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Georgia Hildreth, Acting Director, Advisory Committee Management, 202-566-9996, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 2107, DOE, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on July 18, 1978.

WILLIAM P. DAVIS,
*Deputy Director of Administration.*

[FR Doc. 78-20387 Filed 7-21-78; 8:45 am]

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[3128-01]

Office of Hearings and Appeals

APPLICATIONS FOR EXCEPTION FILED BY CRUDE OIL PRODUCERS

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Further Notice Regarding August 10 and August 16, 1978, Public Hearings Concerning Applications for Exception Filed by Crude Oil Producers.

SUMMARY: In a June 22, 1978, FEDERAL REGISTER Notice, the Office of Hearings and Appeals of the Department of Energy gave notice of two public hearings to be held to receive comments regarding the standards which the DOE presently applies in granting exceptions from the crude oil ceiling price regulations in two types of situations (43 FR 26792, June 22, 1978). The hearings will be held on August 10 in Houston, Tex., and August 16 in Washington, D.C. In this Notice the Office of Hearings and Appeals urged firms which intend to make presentations at the August hearings to support any general presentation with specific supportive data and expert testimony, where possible.

FOR FURTHER INFORMATION CONTACT:

Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 2000 M Street NW., Room 8014, Washington, D.C. 20461, 202-254-9681.

SUPPLEMENTARY INFORMATION: On June 19, 1978, the Office of Hearings and Appeals of the Department of Energy issued a Notice of Public Hearing with regard to two hearings which have been scheduled for August 10, 1978, in Houston, Tex., and for August 16, 1978, in Washington, D.C. (43 FR 26792, June 22, 1978). These hearings are designed to elicit comments regarding the standards which the DOE currently applies in considering exception applications filed by crude oil producers. Specifically, the DOE is interested in receiving comments concerning the standards which should be applied in determining the level of ex-

ception relief to be granted in those situations in which it is determined that exception relief is necessary to provide a producer with an economic incentive (i) to maintain existing production operations, or (ii) to undertake a capital investment project which would result in the production of a significant quantity of additional crude oil.

On July 12, 1978, the Office of Hearings and Appeals convened an informal conference in Washinton, D.C. in order to discuss the type of data which might be presented at the August 10 and August 16 hearings (43 FR 29354, July 7, 1978). After considering the comments made at that conference, we concluded that it would be useful to issue this supplemental Notice concerning the manner in which we believe these hearings should be conducted and the most useful types of data which producers and other interested parties should be encouraged to submit.

As indicated at the July 12 conference, rather than receiving general opinions of firms, we would prefer to receive specific data and expert testimony concerning the adequacy and propriety of the standards currently applied in considering crude oil exception applications and the specific ways in which these standards might be modified. Consequently, we believe that it is appropriate to conduct the August hearings so as to afford interested firms an opportunity to call expert witnesses and to present direct testimony which specifically addresses the type of exception relief which should be granted to crude oil producers. While any interested party that wishes to make a general presentation will be provided with an opportunity to do so, we will provide adequate time for any firm that wishes to make a specific evidentiary type presentation.

The exeption relief approved to provide a producer with an incentive to continue ongoing crude oil production activities is generally designed to provide a financial incentive for continued crude oil production where expenses are or soon will exceed revenues received from the sale of crude oil produced from a field. *See Great Southern Oil and Gas Co., Inc.*, 3 FEA Par. 83,124 (March 9, 1976). At the present time, the exception relief approved in *Great Southern* type cases generally permits the producer involved to recover unit cost increases experienced since May 1973 in the next 2 fiscal quarters. Producers which believe that this methodology should be altered are encouraged to provide specific testimony concerning alternative methodologies which might be applied and the economic basis for those alternatives. A producer might, for example, attempt to demonstrate through the submission of specific data that this method does not in fact provide a sufficient rate of return in the general case to induce a firm to maintain production operations. A general assertion concerning the adequacy of the standards currently applied in *Great Southern* cases and the fairness and effectiveness of alternative standards will be considerably more valuable if it is supported by specific factual material.

The exception relief approved in cases involving capital investments is generally designed to permit the firm involved to realize a 15 percent pre-tax internal rate of return on its investment. Any firm which believes that this return is insufficient is encouraged to submit specific data which demonstrates, in view of the risks involved, that alternative investment possibilities exist which would be more attractive than an investment undertaken in accordance with the terms of an exception decision. Alternatively, a firm might wish to call expert witnesses who are willing to testify as to the rate of return which is necessary before an investment in various types of crude oil producing projects will generally be entertained. Such witnesses might for example include bankers which have considerable experience in considering loan applications filed by crude oil producers or economists who specialize in investment matters.

We recognize that certain of the data which firms may wish to submit may be confidential and thus could not be presented at a public hearing. We request that any firm that wishes to present such proprietary data make as complete a presentation as possible at the hearing and submit any confidential supportive data separately.

In conclusion, we wish to emphasize that the August hearings are specifically designed to solicit specific data and testimony which will assist us in evauluating the standards currently applied in *Great Southern* and investment cases and which will provide a basis for evaluating alternative standards. We encourage all interested parties to attend the hearings and to prepare detailed testimony, supported by factual data where possible, in regard to these issues.

Issued in Washington, D.C., July 14, 1978.

GEORGE B. BREZNAY,
*Acting Director,*
*Office of Hearings and Appeals.*

[FR Doc. 78-20455 Filed 7-21-78; 8:45 am]

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[3128-01]

## ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF HEARINGS AND APPEALS

### Week of May 22 through May 26, 1978

Notice is hereby given that during the week of May 22 through May 26, 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 Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEAL

*Valley Gas, Inc., Ft. Yates, N. Dak., FRA-1483, propane*

Valley Gas, Inc., filed an Appeal from a Remedial Order which was issued to the firm by the FEA Region VIII. In that Remedial Order, the FEA found that during the period November 1, 1973, through September 30, 1974, Valley had sold propane at levels which exceeded the firm's maximum allowable prices and directed Valley to refund these overcharges. In its Appeal, Valley contended that the firm was unable to determine the manner in which the FEA price regulations applied to it and that the FEA had an obligation to inform the firm of its possible violations of the price regulations. The DOE rejected these contentions and found that Valley had an affirmative obligation to conform its activity to the applicable regulations. Valley also argued that it should be permitted to offset the amount of the overcharges which the FEA found to exist by the amount of the firm's undercharges in its subsequent sales of propane. Since Valley presented no evidence that it had reduced its prices solely for the purpose of making restitution for prior overcharges, the DOE found no merit in this argument. In its Appeal, Valley also requested retroactive exception relief which, if granted, would relieve the firm of its obligation to make refunds. The DOE denied that request on the grounds that Valley's compliance with the refund requirements would not result in a severe and irreparable injury which would jepoardize the firm's business operations, and that Valley had not demonstrated the existence of compelling circumstances which would warrant retroactive exception relief. However, the DOE determined that since the amount of revenue which Valley is required to refund constitutes a substantial share of the firm's income, and since propane sales are seasonal, the firm should be permitted 18 months to refund the overcharges to its customers. Accordingly, the DOE granted the Valley Appeal in part.

REQUESTS FOR EXCEPTION

*Midroc Oil Co., Dallas, Tex., DEE-0098, crude oil*

Midroc Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would permit the firm to sell the crude oil produced from the J. W. Parker Lease, located in the Alloway Field, Adams County,

Miss., at upper tier ceiling prices. In considering the exception request, the DOE found that the firm had incurred an operating loss at the Parker Lease during 1975 and 1976. However, the DOE determined that the firm's operating difficulties appeared to be primarily attributable to severe spring flooding at the Parker Lease, and the firm has been able to maintain profitable operations at the lease since the most recent flooding. The DOE also noted that Midroc had not submitted any data which would indicate that the firm's current level of profitability would not provide it with an economic incentive to operate the Parker well during future periods. Therefore, the DOE concluded that Midroc had failed to establish that the application to it of the lower tier ceiling price rule adversely affected the economic incentive of the working interest owners to produce crude oil from the Parker Lease. Accordingly, the exception request was denied.

*Moore & Miller, Oklahoma City, Okla., FEE-4792, crude oil*

Moore and Miller filed an Application for Exception which, if granted, would eliminate the requirement that the firm pay interest on certain overcharges which it had agreed to refund under the terms of a Consent Order. In support of its request, Moore and Miller contended that the interest provision in the Consent Order is unfair and that it will result in a hardship to the firm. The firm also maintained that the violation which is the subject of the Consent Order was the result of a technical misinterpretation of the FEA price regulations and was neither fradulent nor willful.

In considering the firm's request, the DOE initially determined that although it generally may not be appropriate to entertain a firm's request to modify the provisions of a Consent Order within an exception proceeding, the DOE would consider the Moore and Miller Application on its merits. In reaching that determination, the DOE noted the peculiar procedural background of this case, including the fact that an Application for Modification which the firm submitted to the DOE Regional Office had been denied without consideration of its merits. The DOE also noted the firm's allegation that the Regional Office incorrectly advised the firm that it lacked the authority to excuse the firm from the interest payment requirement.

In rejecting the firm's contention that it should not be required to pay interest on its overcharges, the DOE observed that the payment of interest is required to make adequate restitution to a party which has been overcharged. A purchaser of crude oil which has been overcharged lacks the use of the funds which the seller received during the period in which the overcharges occurred, and interest is therefore an appropriate mechanism to compensate it for the loss of access to funds that lawfully belonged to it. The DOE also found that Moore and Miller had failed to supply any evidence which would demonstrate that the payment of interest would cause a serious hardship to the firm. Consequently, the Moore and Miller Application for Exception was denied.

*Rebholz Gas & Electric, Inc., Edgerton, Wis., FEE-4801, propane*

Rebholz Gas & Electric, Inc. filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted would have resulted in the issuance of orders by the DOE (i) assigning Rebholz a new, lower-priced supplier of propane to replace its base period supplier and (ii) directing the new supplier to furnish Rebholz with its base period use of propane. In considering the exception request, the DOE found that Rebholz had failed to substantiate its contention that the price it pays for propane is significantly higher than the prices the firm's competitors pay for their propane supplies. The DOE further determined that the approval of the relief requested by Rebholz would confer upon it an unfair advantage over some of its competitors. The Rebholz exception request was therefore denied.

REQUESTS FOR STAY

*Guam Oil & Refining Co. Inc., Washington, D.C., DRS-0060, crude oil*

Guam Oil & Refining Co., Inc. (Gorco) filed an Application for Stay of an enforcement proceeding that had been initiated through the issuance to the firm of a Notice of Probable Violation (NOPV) by the DOE Office of Enforcement. The stay request, if granted, would suspend any obligation that Gorco submit a response to the NOPV until a final determination is reached with respect to its pending Application for Exception. In considering the stay request, the DOE noted that senior agency officials had previously represented to Gorco that no compliance action would be taken pending completion of the exception proceeding. Accordingly, the DOE granted the Gorco stay request in order to preserve the status quo ante until a final determination is reached on the firm's exception application.

*J. & W. REFINING, INC., Tucker, Tex., DES-0056, crude oil*

J. & W. Refining, Inc., filed an Application for Stay in which it requested that the firm's obligation to purchase entitlements in the amounts specified in the monthly Entitlement Notices issued during the period January through March, 1978, be suspended pending a final determination on an Application for Exception which J. & W. filed on July 26, 1977. If the J. & W. stay request were granted, the firm would not be required to fulfill certain entitlement purchase obligations totaling $563,915.22. In considering the stay request, the DOE noted that, in its Application for Stay J. & W. had requested the approval of an exception from generally applicable regulatory requirements in spite of the agency's preliminary determination that such an exception was not warranted. The DOE noted that the evaluation of such a request must take into consideration the particular posture of the applicant with respect to the regulatory program from which it seeks relief. In this regard, the DOE found that J. & W. had repeatedly failed to comply with the requirements of the Entitlements Program, and that it had not filed its stay request until almost two months subsequent to the date on which it had first violated the applicable regulations. In evaluating J. & W.'s current posture, the DOE found that during the period in which it was incurring entitlement purchase obligations the firm had failed to use available financial resources to satisfy those obligations. The DOE also observed that the present record in the proceedings involving J. & W. does not support the conclusion that there exists a substantial likelihood of success on the merits of the firm's exception request. On the basis of these considerations, the J. & W. Application for Stay was denied.

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed: Smith's Bottled Gas, Charleston, W. Va., DEH-0004.

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the DOE Procedural Regulations: Plateau, Inc., Washington, D.C., DEA-0167.

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 Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

JULY 14, 1978.

GEORGE B. BREZNAY,
*Acting Director,*
*Office of Hearings and Appeals.*

[FR Doc. 78-20459 Filed 7-21-78; 8:45 am]

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[3128-01]

## ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF HEARINGS AND APPEALS

**Week of May 29 through June 2, 1978**

Notice is hereby given that during the week of May 29 through June 2, 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 Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEAL

*Bassett Oil & Equipment Co., Inc., Bassett, Va., DRA-0153, kerosene and No. 2 fuel oil*

Bassett Oil and Equipment Co., Inc. filed an Appeal from a revised Remedial Order which was issued to the firm by DOE Region III on January 18, 1978. In that Remedial Order, DOE Region III found that during the period November 1, 1973, through December 31, 1975, Bassett had improperly sold certain quantities of kerosene and No. 2 fuel oil at prices that exceeded the maximum allowable selling prices for those products computed pursuant to the provisions of 6 CFR 150.359 and 10 CFR 212.93. In order to correct for this violation, the revised Remedial Order directs Bassett to make refunds to its customers. In its Appeal, Bassett contended that the revised

Remedial Order failed to set forth sufficient legal and factual material to support the findings made with respect to certain quantities of fuel oil which the firm had exchanged with other firms during the audit period. In considering this aspect of the Bassett Appeal, the DOE found that the revised Remedial Order contains a complete indication of the basis for the findings which it makes with respect to Bassett's exchanges. Since Bassett did not present any material in its Appeal to challenge those findings, this portion of the firm's Appeal was rejected. Bassett also contended that in calculating the firm's maximum allowable selling prices, DOE Region III improperly used different May 15, 1973, selling prices for members of the same class of purchaser. After reviewing the record in this matter, the DOE determined that this contention was correct. Accordingly, the portion of the revised Remedial Order which related to the class of purchaser concerned was remanded to the Region III Office for a recalculation of the applicable May 15, 1973 selling price. Finally, the DOE determined that the Region III Office erred in assessing violations for certain overcharges allegedly made by Bassett to its reseller class of purchaser. Specifically, the DOE found that findings regarding those violations had not previously been presented to Bassett during the enforcement proceeding, and that the firm therefore had not had an adequate opportunity to respond to those findings. Accordingly, this portion of the revised Remedial Order was rescinded. The Bassett Appeal was therefore granted in part and denied in part.

REQUESTS FOR EXCEPTION

*Paul S. Ache, Jr., Houston, Tex., DEE-0059, crude oil*

Paul S. Ache, Jr. (Ache) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Ache, who holds a 25 percent working interest in the Katie Brown Lease located in Creek County, Oklahoma, to sell the crude oil produced from that lease for his benefit at upper tier ceiling prices. In evaluating the exception application, the DOE found that Ache's operating costs had increased to the point where he no longer had an economic incentive to continue his participation in the crude oil production activities at the lease. However, the DOE also determined that since Ache is neither the operator nor the majority working interest owner of the lease, Ache could not make the requisite showing that his continued participation as a working interest owner was essential to the successful recovery of the remaining crude oil in the field. See *Great Southern Oil and Gas Co., Inc.*, 3 FEA Par. 83,124 (March 9, 1976). Nevertheless, the DOE determined that Ache's application should be approved since it appeared that he would have been eligible for exception relief if the majority working interest owner of the lease had filed an exception application on behalf of all the working interest owners. The DOE concluded that a denial of Ache's request would frustrate the effectuation of the goals of the Emergency Petroleum Allocation Act of 1973, and consequently the DOE determined that Ache should be allowed to recover his increased operating costs in the manner established in the *Great Southern* line of cases. Accordingly, Ache was permitted to sell 41.38 percent of the crude oil produced from the Katie Brown Lease for his benefit at upper tier ceiling prices for a period of six months.

*R. H. Engelke, San Antonio, Tex., DEE-0904, crude oil*

R. H. Engelke filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit Engelke to sell the crude oil produced from the Bertha Copsey Lease located in Jackson County, Texas, at upper tier ceiling prices. In considering the exception application, the DOE found that the cost of producing crude oil from the Copsey Lease had increased to a level which now exceeds the revenues the firm can obtain from the sale of the crude oil at the applicable ceiling price. The DOE therefore concluded that Engelke had no economic incentive to continue to produce crude oil from the property. The DOE also determined that it was highly unlikely that the crude oil in the reservoir underlying the lease would be recoverable by any other firm in the absence of exception relief. Therefore, in order to alleviate the gross inequity which was found to exist, the DOE granted exception relief which permits Engelke to sell at upper tier ceiling prices 78.2 percent of the crude oil produced from the Copsey Lease for the benefit of the working interest owners.

*Monsanto Co., Houston, Tex., DEE-0490, crude oil*

The Monsanto Co. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell the crude oil which it produces from the North Black Slough Unit in Burke County, North Dakota at upper tier ceiling prices. In considering the exception request, the DOE found that Monsanto's operating costs at the Unit had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the North Black Slough Unit if the crude oil were subject to the lower tier ceiling price rule. The DOE also determined that if Monsanto abandoned its operations at the Unit, a substantial quantity of otherwise recoverable crude oil would not be recovered. On the basis of the criteria applied in previous Decisions, the DOE therefore concluded that Monsanto should be permitted to sell at upper tier ceiling prices 39.23 percent of the crude oil produced from the North Black Slough Unit for the benefit of the working interest.

*Mull Drilling Co., Inc., Wichita, Kans., FEE-4791, crude oil*

Mull Drilling Co., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell the crude oil which it produces from the UPRR Roth Lease in Cheyenne County, Colorado at upper tier ceiling prices. In considering the exception request, the DOE found that the recurring expense of repairing the Reda pumps on the Roth Lease has increased to the point where the firm no longer has an economic incentive to continue the production from that lease if the crude oil is subject to the lower tier ceiling price rule. The DOE also determined that if Mull abandoned its operations at the Lease, a substantial quantity of otherwise recoverable crude oil would not be recovered. On the basis of the criteria applied in previous Decisions, the DOE therefore concluded that Mull should be permitted to sell at upper tier ceiling prices 84.91 percent of the crude oil produced from the UPRR Roth Lease for the benefit of the working interest.

*Standard Oil Co. (Indiana), Chicago, Ill., FXE-4549, natural gas liquids*

On November 2, 1977, the Standard Oil Company of Indiana (Amoco) filed a Statement of Objections to a Proposed Decision and Order issued to Amoco on September 22, 1977. In the Proposed Decision, the DOE determined that the firm should be granted an exception from the provisions of 10 CFR 212.165 to permit it to increase its prices for natural gas liquids and liquid products to reflect non-product cost increases at its Edgewood natural gas processing facility. In the Proposed Decision, the DOE also noted that because the Edgewood facility had been shut down for repairs for a portion of the second quarter of the firm's 1977 fiscal year, the level of production during that quarter was substantially lower than the level which Amoco could otherwise have reasonably expected to obtain. Accordingly, the DOE in measuring the current level of non-product cost increases, utilized operating data for the fourth quarter of the firm's 1976 fiscal year and the first quarter of the firm's 1977 fiscal year. In objecting to this methodology, Amoco contended that it is inappropriate for the DOE to make an adjustment to account for the decrease in production experienced at the Edgewood facility during the second quarter of the 1977 fiscal year. In rejecting this contention, the DOE held that the level of exeption relief approved in the Proposed Decision was correctly calculated and that it was proper and consistent with previous Decisions to use the earlier period because major repairs conducted at the plant during the second quarter of 1977 had significantly reduced the plant's production and made that quarter unrepresentative of the plant's normal operations. The DOE further noted that exception relief which it grants to natural gas plant owners is intended to provide an incentive for continued and possibly increased production from gas plants and is generally not intended to permit a firm to recover through increased prices the total value of the increased costs which it incurred in a prior period. Since Amoco did not provide any convincing arguments as to why the DOE should depart from the precedent established in prior cases, the September 22 Proposed Decision and Order was issued in final form with an effective date of September 22, 1977.

*Sun Co., Inc., Dallas, Tex., DXE-0041, Natural Gas Liquid Products*

On November 15, 1977, Sun Co., Inc., filed a Statement of Objections to a Proposed Decision and Order which the DOE issued to the firm on September 30, 1977. In the Proposed Decision, the DOE tentatively determined that exception relief which was previously granted to Sun should be extended and the firm should be permitted to increase its prices for natural gas liquid products produced at its Spivey Plant above the maximum levels permitted under 10 CFR 212.165. In its Statement of Objections, Sun contended that the DOE erred in determining the level of proposed exception relief by utilizing the most recently completed 6 month period for purposes of com-

parison with May 15, 1973 cost levels. Sun argued that the use of the most recent 3 month period would result in a better approximation of future cost levels. In considering Sun's objections, the DOE noted that it had previously rejected an identical argument which Sun had raised in a appeal involving exception relief requested for some of its other plants. See *Sun Company, Inc.*, 6 FEA Par. 80,557 (September 19, 1977). In that decision the DOE stated that it was reasonable to use a 6 month period since under that method the DOE utilizes all of the data which has become available since the date on which exception relief was previously granted. Since Sun failed to present any convincing evidence that the use of the 6 month period is not rational or that its application in this case was inappropriate, the DOE rejected Sun's objections and issued the Decision and Order in final form.

REQUEST FOR MODIFICATION OR RESCISSION

*Chanslor-Western Oil & Development Co., Santa Fe Springs, Calif., DMR-0004, Crude Oil*

Chanslor-Western Oil & Development Co. filed an Application for Modification of a Decision and Order which the DOE issued to the firm on September 13, 1977. *Chanslor-Western Oil & Development Co.*, 6 FEA Par. 80,550 (September 13, 1977). In that Decision, the DOE granted in part Chanslor's request for an exception from the provisions of 10 CFR, Part 212, Subpart D, and permitted the firm to sell at upper tier ceiling prices 63 percent of the crude oil produced for the benefit of the working interest owners from the Torrance Main Zone Unit located in Torrance, Calif., subsequent to the initiation of a capital investment program planned by the firm. In its request for modification, Chanslor contended that the previous Decision did not consider the alternate uses of the land on which the Torrance Unit is situated in determining the rate base upon which the firm's internal rate of return was calculated. In considering the request, the DOE noted that the exception relief approved in the September 13, 1977, Decision and Order was designed to permit the working interest owners to realize a 15 percent rate of return on the capital essential to maintain extraction activities at the Torrance Unit. The rate of return analysis utilized in that Decision did not include any consideration of the opportunity value of the funds that would be derived from the sale of the land if the Torrance Unit were abandoned. As a result of this omission, the DOE found that Chanslor was correct in stating that in the absence of additional exception relief, the working interest owners would have a significant economic incentive to shut-in the Torrance Unit and employ the funds derived from the sale of this property in alternate investment opportunities. Under these circumstances, the DOE determined that the September 13 Decision should be modified and that exception relief should be structured to incorporate the economic value of the land. Therefore, the DOE granted Chanslor additional exception relief and permitted it to sell at upper tier ceiling prices 93.56 percent of the crude oil produced from the Torrance Unit for the benefit of the working interest owners after the capital investment program is undertaken.

PETITIONS TO INTERVENE

*No. 2 (Home) Heating Oil, Petitions To Intervene, Washington, D.C., DEH-0008, Through DEH-0010, Evidentiary Hearing, Home Heating Oil*

The Office of Hearings and Appeals of the Department of Energy recently received eleven petitions to intervene submitted by organizations that wished to participate as parties in an evidentiary hearing which will be held in August 1978 concerning No. 2 (home) heating oil. Those petitions were filed pursuant to Rule 2 of the rules of procedure which the Office of Hearings and Appeals adopted on an interim basis on April 18, 1978. After considering the petitions, the Office of Hearings and Appeals determined that immediate designation as parties was warranted with respect to three of the petitioners, the Energy Policy Task Force of the Consumer Federation of America, the American Petroleum Institute, and the Antitrust Division of the Department of Justice. In its determination, the Office of Hearings and Appeals found that each of these organizations would make an important contribution to the August 1978 evidentiary hearing. The Office of Hearings and Appeals indicated that a conference would be held regarding the remaining petitions and that a decision with respect to these petitions would be made afterwards.

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

*JEDCO, Inc., Mobile, Ala., DRA-0117*

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the DOE procedural regulations:

*Laguna Petroleum Co., Denver, Colo., DEE-1011*

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 Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

GEORGE B. BREZNAY,
*Acting Director,*
*Office of Hearings and Appeals.*

JULY 17, 1978.

[FR Doc. 78-20460 Filed 7-21-78; 8:45 am]

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[3128-01]

## ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF HEARINGS AND APPEALS

### July 3 through July 7, 1978

Notice is hereby given that during the period July 3 through July 7, 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 F.R. 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 the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, 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. 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.d.t., except federal holidays.

THOMAS L. WIEKER,
*Acting Director,*
*Office of Hearings and Appeals.*

JULY 18, 1978.

*Chevron U.S.A., Inc., San Francisco, Calif., FEE-4652, motor gasoline*

Chevron U.S.A., Inc. filed an Application for Exception from the provisions of 10 CFR 212.83(c). The Chevron application relates to its sale of certain marketing assets and the related conversion of certain commission agents into branded independent jobbers. The exception request, if granted, would permit Chevron to adjust the manner in which it calculates is base period marketing costs pursuant to 10 CFR 212.83(c) and to place the former commission agents in another class of purchaser. On July 5, 1978 the DOE issued a Proposed Decision and Order which determined that the exception request should be granted.

*Giant Industries, Inc., Bloomfield, N. Mex., DEE-0060, crude oil*

Giant Industries, Inc. filed an Application for Exception from the provisions of 10 CFR 211.65. The exception request, if granted, would allow Giant to continue to receive allocations of crude oil under the DOE Buy/Sell Program. On July 5, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

*Goose Creek Oil Co., Salem, Ill., DEE-0138, crude oil*

The Goose Creek Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Goose Creek to receive upper tier ceiling prices for the crude oil which the firm produced and sold from the Robinson No. 4 lease during the month of June 1977. On July 7, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

*Natrogas, Inc., Minneapolis, Minn., DXE-1355, propane*

Natrogas, Inc. filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would result in the extension of exception relief previously granted to the firm and the issuance of an order assigning the firm new, lower-priced supplier(s) of propane. On July 7, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

*O'Meara Brothers, New Orleans, La., DX-1116, DXE-1117, crude oil*

O'Meara Brothers filed two Applications for Exception from the provisions of 10 CFR, part 212, Subpart D. The exception requests, if granted, would result in the extension of exception relief previously granted and would permit the firm to continue to sell a portion of the crude oil which it produces from the Vinton Lease and the Louisiana State Lease at upper tier ceiling prices. On July 7, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request pertaining to the Vinton Lease be denied and the application pertaining to the Louisiana State Lease be granted.

*Peninsular Gas Co., Omaha, Nebra., DXE-0514, propane*

Peninsular Gas Co. filed an Application for Exception from the provisions of 10 CFR, part 211. The exception request, if granted, would permit Peninsular to increase its base period use of propane for peak shaving. On July 5, 1978, the DOE issued a proposed Decision and Order which determined that the exception request should be granted.

*Placid Oil Co., Dallas, Tex., DEE-0156, crude oil*

Placid Oil Co. filed an Application for Exception from the provisions of 10 CFR, part 212, Subpart D in which the firm requested that it be permitted to sell at exempt price levels the crude oil which will be produced as a result of a proposed investment at the Black Lake Unit, located in Natchitoches Parish, La. On July 5, 1978, the DOE issued a Proposed Decision and Order which determined that Placid should be permitted to sell 46.52 percent of the crude oil produced as a result of its investment at upper tier ceiling prices during each year through 1989. The DOE also determined that Placid should be permitted to sell 100 percent of its incremental production at upper tier ceiling prices during 1990 and 1991, and 100 percent of its incremental production at exempt prices during 1992 and 1993.

*Saber Refining Co., Corpus Christi, Tex., DEE-0425, crude oil*

Saber Refining Co. filed an Application for Exception from the provisions of 10 CFR 211.67(e)(2). The exception request, if granted, would permit Saber to receive additional small refiner bias entitlements for the crude oil which is processed for its account pursuant to processing agreements which it intends to enter into with other refiners. On July 7, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

*Wilson-Owens Production Co., Longview, Tex., DEE-1025, crude oil*

The Wilson-Owens Production 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 sell the crude oil which is produced from the W. T. Blackwell Unit lease, located in Wood County, Tex., at upper tier ceiling prices. On June 30, 1978, the DOE issued a Proposed Decision and Order in which it determined that the exception request should be granted and that the firm should be permitted to sell 44.30 percent of the crude oil which is produced from that lease for the benefit of the working interest owners at upper tier ceiling prices until Dec. 31, 1978.

[FR Doc. 78-20458 Filed 7-21-78; 8:45 am]

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[6560-01]

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 931-1]

### RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

Pursuant to the President's Reorganization Plan No. 1, the Environmental Protection Agency is the official recipient for environmental impact statements (EIS's) and is required to publish the availability of each EIS received weekly. The following is a list of environmental impact statements received by the Environmental Protection Agency from July 10, 1978, through July 14, 1978. The date of receipt for each statement is noted in the statement summary. Under the guidelines of the Council on Environmental Quality, the minimum period for public review and comment on draft environmental impact statements is 45 days; the date of submission of comments is September 4, 1978. The 30-day period for each final statement begins the day the statement is made available to the Environmental Protection Agency and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: July 19, 1978.

WILLIAM D. DICKERSON,
*Acting Director,*
*Office of Federal Activities.*

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

*Draft*

Priest River, Wild and Scenic Classification, Kaniksu National Forest, boundary and Bonner Counties, Idaho, July 14: It is proposed that 18.5 miles of the Priest River and about 5,732 acres of adjacent land located in the Kaniksu National Forest, Boundary and Bonner Counties, Idaho, be included in the National Wild and Scenic Rivers System and be classified, designated and administered as a wild river area. Approximately 360 acres of private land which is owned by Burlington Northern, Inc., will be acquired through exchange. Administration will be by the USDA except for 140 acres of State land to be administered by Idaho. Specific management directions are also discussed (USDA-FS-R1-(04)-DES-LEG-78-10) (EIS Order No. 80754).

Moyie River, Management and Protection, Boundary County, Idaho, July 14: The proposal recommends the Moyie River, Kaniksu National Forest, Boundary County, Idaho, not be included in the National Wild and Scenic Rivers System, but that other measures be taken toward preservation of the area. These measures would involve management and protection of the river area and associated values be achieved through national forest lands, State planning for State lands, and local county flood plain zoning, and other zoning for private lands along the river (USDA-FS-R1 (04)-DES-LEG-78-09) (EIS Order No. 80760).

Troy Project, Asarco Inc., Proposed Mining Operation, Lincoln County, Mont., July 10: This proposal concerns an application by Asarco Inc., for the issuance by the USDA for permits and leases to develop and mine approximately 48 million tons of copper-silver ore over a 19-year period in the Bull Lake Valley, Kootenpai National Forest, Lincoln County, Mont. The ore would be milled at a plantsite near the mine and transported to a copper smelter. The waste would be transported in slurry, through pipeline, to a tailing impoundment area for water recovery. (EIS Order No. 80731.)

Cranberry Wilderness, Monongahela National Forest, Pocahontas and Webster Counties, W. Va., July 14: The proposed action recommends that 35,550 acres of land within the Monongahela National Forest, Pocahontas and Webster Counties, W. Va. be added to the National Wilderness Preservation System. Other recommendations include: (1) That the area be named Cranberry Wilderness; (2) USDA purchase minerals contained in the area, and (3) the Cranberry

Glades Botanical area be excluded from the proposed wilderness. The purpose of the proposed action is to develop long-term management direction. (USDA-FS-WO-DES-LEG-78-11; EIS Order No. 80762.)

*Final*

Willow Springs Unit, Mark Twain National Forest, Douglas, Howell and Ozark Counties, Mo., July 12: Proposed is a unit plan for the Willow Springs Unit in Douglas, Howell, and Ozark Counties, Mo. The proposal would establish 4 Broad Management Zones and cover the time period from October 1, 1977 to September 30, 1989. The various areas will be managed for recreational or timber harvesting purposes, depending on the character of the area. The plan calls for construction of 86 miles of trail, new picnicking, boating, and camping areas, and 49 miles of new road. Adverse effects include soil erosion, increased noise levels, and reduced timber capability. (USDA-FS-R9-FES(ADM)76-06). Comments made by: HEW, DOI, EPA, USDA, State and local agencies (EIS Order No. 80747.)

Placid-Blanchard Unit Plan, Lolo National Forest, Missoula County, Mont., July 10: Proposed is the implementation of a revised multiple use plan for the Placid-Blanchard Planning Unit, Lolo National Forest, Missoula County, Mont. The plan recommends that 25,210 acres be managed in various combinations for recreations, esthetics, fisheries, wildlife, watershed, timber, and range. Another 3,610 acres, 150 of the essentially roadless area, and a near natural area of 3,460 acres, will be managed with only minimum development for back-country recreation, esthetics, fisheries, wildlife, and watershed. Natural conditions will be modified on 7,970 acres. (USDA-FS-R1(6)-FES-ADM-77-7.) Comments made by: FPC, HEW, DOI, EPA, State agencies, Groups, Individuals, and Businesses. (EIS Order No. 80729.)

SOIL CONSERVATION SERVICE

*Draft*

White's Mill Flood Prevention and Drainage, R.C. & D., Sumter County, S.C., July 11: This proposal concerns the management and alteration of 145 acres of land in Sumter County, S.C., to prevent flooding and improve drainage. Land treatment will include such measures as land leveling, open ditches, tile drains, field ditchs, brush control, and improved management practices. The proposed structural measures consist of about 0.7 mile of channel work with a bottom width of 3 feet. All of the channel work will be on previously altered ephemeral streams. (USDA, SC, EIS, R.C. & D. (ADM)-78/1-(D)-SC) (EIS Order No. 80737.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attention: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

*Draft*

Wailupe Stream, Flood Control and Allied Purposes, Honolulu County, Hawaii, July 14: The proposed plan of improvement for Wailupe Stream, Oahu, Honolulu County, Hawaii, consists of extending the existing channel 212 feet offshore of the stream mouth, revetting the mouth, and deepening and lining the existing channel from the mouth through the Kalanianaole highway bridge. Also recommended in the proposed plan are the following actions: (1) Lining 6,835 feet of the existing channel from the revetted section to the debris basin; (2) deepening the debris basin to increase its capacity; and (3) lining about 100 feet of Kelui tributary. (Honolulu District.) (EIS Order No. 80755.)

Removal and disposal, floatable debris, Boston, Suffolk County, Mass., July 10: The proposed project provides for a one-time clean-up program to rid Boston Harbor, located in Suffolk County, Mass., of its sources of floatable debris. These sources are potentially hazardous to navigation, suppressant to land values and aesthetically unpleasant. The debris include dilapidated shorefront structures, derelict vessels and loose on-shore debris. Existing floating debris will also be removed from the harbor area. All debris would be delivered to one or the other of two staging areas, crushed and compacted and taken to a sanitary landfill in Marshfield for disposal. (New England Division.) (EIS Order No. 80733.)

Red River backwater flood control, Sicily Island, Catahoula and Franklin Parishes, La., July 11: This proposal concerns the advisability of providing flood protection to the Sicily Island, Catahoula and Franklin Parishes, La. The measures to be taken include a Levee, gravity flood gates, a 300-cubic foot/second pumping station, and a 750-cubic foot/second pumping station. Recommended as part of the proposal are the acquisition and management of 1,400 acres of wildlife lands, and the construction of water supply and control facilities in the Lake Louis-Bayou Louis system to reduce project-induced losses. (Vicksburg District.) (EIS Order No. 80732.)

*Final*

Blue Waters Ditch Improvements, East St. Louis, St. Clair and Madison Counties, Mo., July 12: The proposed plan of improvement will provide the Blue Waters area. A segment of the East St. Louis and vicinity interior flood control project, with protection against interior flooding from a design storm of 100-year frequency. Approximately 18 miles of new or enlarged ditches will be constructed; two natural water detention areas totalling about 1,000 acres will be designated, and a 2,600 C.F.S. pumping station will be constructed. Adverse impacts include noise and dust during the 3.5 year construction period, the location of large ditches near residential areas, development of the flood plain and restriction of land use in natural detention areas. (St. Louis District.) Comments made by: EPA, DOI, AHP, USDA, DOT, FPC, HEW, HUD, State and local agencies. (EIS Order No. 80741.)

Forest Grove Dam and Reservoir, Caney Creek, Henderson County, Tex., July 12: Proposed is the granting of a permit for the construction of a dam by the Texas utilities Services Inc., on Caney Creek, Henderson County, Tex. Plan implementation calls for the construction of the Forest Grove Dam, circulating water intake canals and discharge structures, a pump station and pipeline and reservoir relocations. The reservoir will cover 4 to 5 miles of existing Caney Creek and will have a surface area of approximately 1,500 acres. Adverse impacts include the inundation of 1,500 acres and the associated displacement of wildlife; the loss of 5.2 miles of flowing stream and its ecosystem; and construction-related impacts. (Fort Worth District.) Comments made by: EPA, COE, AHP, USDA, DOC, DOE, FERC, HEW, DOI, DOT, VA, State and local agencies. (EIS Order No. 80744.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230; 202-377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*Final*

Project Stormfury, Atlantic Weather Modification, July 14: This project is a scientific experiment designed to explore the structure and dynamics of Western Atlantic Tropical Cyclones and the potential of modification. The experimentation is to test the hypothesis that the maximum winds of hurricanes can be reduced by at least 10 to 15 percent by seeding the proper clouds with Freezing Nuclei (Silver Iodide). Each experiment will consist of 17 flights over a 60 hour period, with approximately 875 pounds of Silver Iodide being dispensed in 4 separate flights over an 8-10 hour period. The operational area is primarily located east of the Bahamas, north of Puerto Rico and south of Bermuda. Comments made by: State and local agencies. (EIS Order No. 80712.)

*Final supplement*

Atlantic groundfish fishery (S-3), July 14: This statement is the final supplement to a final EIS filed with CEO in June 1977, concerning changes to the Atlantic (New England) ground fishery management plan for Haddock, Cod, and Yellowtail Flounder fisheries. These recommended changes would substantially modify the present regulations (50 CFR 651) on groundfish harvest. Proposed changes include: (1) Increasing the OY for Haddock to 20,000 MT and 26,000 MT for Cod; (2) Recreational allocations; (3) Establishing a minimum mesh site for Gillnets; (4) Mandatory retention of all regulated species taken; (5) Revised fishery closure procedures. Comments made by: USCG, local agencies, groups, individuals, and businesses. (ELR Order No. 80764.)

DEPARTMENT OF DEFENSE

AIR FORCE

Contact: Col. Luis Dominguez, Department of the Air Force, Room 5D431, Pentagon, Washington, D.C. 20330; 202-697-7799.

*Draft*

Air Force Missle MX: Milestone II, July 14: The U.S. Air Force proposed the development of a new Inter-Continental Ballistic Missile (ICBM) force and basic system known as MX. The MX system will soon require a limited number of full-scale prototype missiles and a series of tests associated with these prototypes. This development and test program is known as a Full-Scale Engineering Development (FSED). The proposal discusses the feasibility of proceeding with the FSED phase. (EIS Order No. 80761.)

DEPARTMENT OF ENERGY

Contact: Mr. Robert Stern, Office of NEPA Affairs, Department of Energy, 1200 Pennsylvania Avenue, Room 7119, Washington, D.C. 20461; 202-566-9760.

*Final*

Seaway Group Salt Domes—SPR, Brazeria and Fort Bend Counties, Tex., July 14: Proposed are five candidate sites for early storage reserve (ESR) facilities for the Strategic Petroleum Reserve (SPR) program. The sites are from the Seaway group of Salt Domes located in the Gulf Coast Region of southeastern Texas. Adverse effects include short-term, construction related pollution; Hydrocarbon emissions associated with tanker loading and off-loading; Impact on water quality from possible oil and brine spills; Impact of brine disposal to the Gulf of Mexico; and Resultant impact to the flora and fauna which would be affected by such oil or brine spills. (DOE/EIS-0021.) Comments made by: EPA, NOAA, COE, USDA, and AHP. (EIS Order No. 80763.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Ms. Susan Walker, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604; 312-353-2307.

*Draft*

Madison Metropolitan WWT and Discharge, Dane County, Wis., July 14: Sewage treatment facilities and construction of advanced waste treatment facilities at the Madison Metropolitan Sewerage District's Nine Springs Sewage Treatment Plant in Dane County, Wis. This action will also require the issuance of an NPDES permit. The effluent will be transmitted via the existing pipeline and effluent ditch to Badfish Creek. Three alternatives were considered. (EPA-5-WI-Dane-Madison-WWTP-78) (EIS order No. 80756.)

Contact: Mr. Clinton Spotts, Environmental Protection Agency, Region VI, First International Building, 1201 Elm Street, Dallas, Tex. 75270; 214-729-2716.

*Draft*

Lakeview Wastewater Treatment Facilities, Baxter County, Ark., July 14: This proposal considers the construction of a wastewater treatment (WWT) plant located in Lakeview, Baxter County, Ark., which is designed to serve 3,000 persons at 100 gallons/day for an average wastewater flow of 300,000 GPD in the 1995 design year, the collection system will serve the towns of Lakeview, Edgewood Bay, Leisure Hills, Bull Shoals State Park, Lakeview Recreation area and the Gaston Road area. Several alternatives were considered including no-action, upgrading on-site disposal systems, and construction of a municipal collection and treatment system. (EIS order No. 80751.)

Contact: Ms. Alexandria Smith, Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Wash. 98101; 206-399-1595.

*Final supplement*

Central Kitsap County, Wastewater Facilities, Kitsap County, Wash. July 14: This proposal supplements a final EIS filed in May 1976, concerning Kitsap County Wastewater Facilities Project, which included a 16" interceptor along Bucklin Hill Road and a 24" transmission line to the Sewage Treatment Plant. Following revision of the comprehensive land use plan, Kitsap County has requested approval and grant assistance to construct a 24" line along Bucklin Hill Road and a 30" transmission line north of pump station No. 9 to convey wastewaters to the Sewage Treatment Plant. (ELR order No. 80748.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405; 202-566-0405.

*Final*

Fort Kent Border Station, Aroostook Co., Maine, July 14: The proposed project involves the construction by the General Services Administration, Public Buildings Service, of a new border station facility in Fort Kent, Aroostook County, Maine, to replace the existing inadequate and outmoded wooden station leased from the State of Maine. The proposed site will encompass a minimum area of approximately 45,000 square feet and will consist of three buildings. (EM-78001.) Comments made by: EPA, FPC, COE, GSA, DOI, DOC, TRE, SBA, LAB, JUS, State, and local agencies, and individuals. (EIS order No. 80735.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410; 202-755-6308.

*Final*

Westbranch Subdivision, Harris County, Tex., July 14: The proposed action concerns the development of the Westbranch Subdivision in northwest Harris County, Tex., by the Affiliated Capital Corporation and Center Savings Association. These businesses propose the development of 412 acres of land and the construction of approximately 1090 single family units. Application has been made for home mortage insurance and requires approval of HUD. (HUD-R06-EIS-78-29D.) (EIS order No. 80759.)

*Draft*

Carrollwood Meadows Subdivision, Hillsborough County, Fla., July 12: The proposed action is the issuance of mortgage insurance to the U.S. Home of Florida, incorporated for development of Carrollwood Meadows Subdivision in Hillsborough County, Fla. The proposed site is located in the northwest portion of the county, just outside the Tampa city limits. The total acreage consists of 394.4 acres and is expected to consist of approximately 955 dwelling units. (HUD-R04-EIS-77-19-D.) (EIS order No. 80739.)

Sunnyview Farms Subdivision, City of Delaware, Delaware County, Ohio, July 13: The proposed action involves a request for mortgage insurance for the residential development of a 150.4 acre tract of land, taking place over approximately a 10-year period in the central western edge of the city of Delaware, Delaware County, Ohio. Development will include the construction of approximately 712 housing units of which 286 will be single family detached, six single family attached, three twin singles, and 420 two- and three-story multifamily units. Land area within the development is being reserved for open space and school usage. (HUD-R05-EIS-78-06-D.) (EIS order No. 80749.)

Northwest Park Subdivision, Harris County, Tex., July 12: The proposed action is the application by Rosslyn Road, Incorporated for mortgage insurance for the development of the Northwest Park Subdivision, located in the Northwest portion of Harris County, Tex. When completed, the proposed subdivision, which encompasses approximately 457 acres, is expected to consist of approximately 1007 dwelling units. (HUD-R06-EIS-78-28-D.) (EIS order No. 80742.)

Silver Firs-Snohomish Cascade Master Plan, Snohomish County, Wash., July 10: The proposed project concerns the Silver Firs-Snohomish Cascade residential development in Snohomish County, Wash. The development consists of 500 acres in Silver Firs, approximately 1,300 acres of the Snohomish Cascade area and will provide a full range of housing, recreation, schools, community business and service facilities. The project when completed, within the 20 to 30 years, will provide approximately 600 housing units. In addition to a no-build alternative, lower and higher density alternatives are considered. (HUD-R10-EIS-78-50.) (EIS order No. 80730.)

*Final*

Residential Conadonga Development, Toa Baja, Puerto Rico, July 12: Proposed is the development of 171 dwelling units in a tract of land of 20.3 cuerdas (19.7 acres) located in Ward Candelaria of the town of Toa Baja, Puerto Rico. These are the fourth and fifth sections of a project that consists of 671 single-family units in 105 cuerdas (102 acres). The project provides 5.6 acres of community facilities. Adverse impacts include permanent change in topography; increased air, water and noise pollution; and construction-related pollution. Comments made by: EPA, DOT, DOI, HEW, NRC, HUD, VA, GSA, State and local agencies. (EIS order No. 80743.)

Timberhills Subdivision, Harris County, Tex., July 14: The proposed action is for the Department of HUD to accept the proposed Timberhills Subdivision, located in the northeast section of Harris County, Tex., for HUD/FHA mortgage insurance purposes. When completed in approximately 9 years, the subdivision will contain approximately 2,148 single-family homes on 537 acres plus recreational facilities to serve the subdivision. Adverse effects include the removal of potential forestland and livestock grazing land from production, and an increased demand for fossil fuels through heavy depending on the automobile for transportation. (HUD-R06-EIS-78-24F.) Comments made by: USDA, COE, EPA, AHP, DOI, DOT, State and local agencies. (EIS order No. 80757.)

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104 (h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

*Final*

Enka water project, phase I, Buncombe County, N.C., July 11: Proposed is a three-step plan to upgrade water service in the Enka area of Buncombe County, N.C. The project will consist of three construction activities: (1) A 12-inch waterline running approximately 7,000 feet along Monte Vista and Sand Hill school roads from Sand Hill to Holbrook Roads, (2) a 16-inch waterline running approximately 11,500 feet along Holbrook, Pisgah View and Candler Knob Roads, from Monte Vista Road to a storage tank site, and (3) a 3,000,000 gallon water storage tank located on Cedar Hill at the end of the 16-inch waterline extending from Candler Knob Road. This system will be used for water supply, emergency reserves and fire fighting. Comments made by: DOI, FERC, EPA, COE, HEW, and TVA. (EIS Order No. 80736.)

Beadle Greenway Area Redevelopment Plan, Minnehaha County, S. Dak., July 11: Proposed is the redevelopment of Beadle Greenway Area, an older deteriorating section of the city of Sioux Falls, S. Dak., consisting of approximately 85,000 residents. It is located on the left bank of the Big Sioux River upstream from the central business district. The project area is bounded on the north by the Big Sioux River and 12th Street, on the east by Cliff Avenue, on the south by 15th Street extended to and along the Chicago and Northwestern Railroad; and on the west by 2nd Avenue. It is also located adjacent to the central business district and Fawick Park; approximately 500 people reside in the Beadle Greenway Area. Comments made by: USDA, EPA, AHP, HUD, State and local agencies. (EIS Order No. 80734.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

*Draft*

Seven Lakes Grazing Management Program, Fremont, Sweetwater, and Carbon Counties, Wyo., July 14: The action proposed concerns the Seven Lakes area located in Fremont, Sweetwater and Carbon Counties, Wyo. The proposal recommends that three allotment management plans (AMPS) be fully implemented. These AMPS would consist of deferred rotation or deferred grazing systems for 15 livestock operators. Recommended use of the area is 54,869 winter sheep animal unit months (ALLMS) for livestock; 1,325 winter sheep ALLMS for wildlife; and 464 winter sheep ALLMS for wild horses. Livestock rotation would be accomplished by fencing, herding, and selected water developments. (USDI-DES-78-26) (EIS Order No. 80752).

*Final*

Uncompahgre Basin Resource Area grazing, several counties in Colorado, July 14: Proposed is the implementation of a domestic livestock grazing program for the Uncompahgre Basin Resource Area (approximately 525,775 acres of national resource lands) in the Montrose district, located in west central Colorado. The overall objective of the proposed action is to increase livestock/wildlife forage by 12,645 AUMS, from a total of 51,315 AUMS existing now to a total of 63,960 AUMS by 2006. Components of the proposed action are: (1) Improved management, (2) trailing on 480 acres, (3) custodial management on 29,460 acres, (4) elimination of grazing on 3,020 acres, and (5) continuation of unallotted status on 13,550 acres. (FES-78-14). Comments made by: AHP, EPA, DOI, State and local agencies. (EIS Order No. 80753.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, P-518, Washington, D.C. 20555, 301-492-8446.

*Final supplement*

Floating Nuclear Power Plants, Part II (S-2), July 12: This supplement to the final EIS filed with CEQ in September 1976, provides further consideration of a number of topics discussed in the FEIS, particularly the environmental parameters peculiar to Riverine and Estuarine siting. The supplement also provides additional information regarding the potential siting at or near ocean shorelines, sabotage potential, alternative energy sources and protection of the coastal environment. (NUREG-0055-Addendum.) Comments made by: CEQ, EPA, USDA, COE, DOC, JUD, DOI, DOT, State agencies, groups and businesses. (ELR Order No. 80745.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

*Draft*

Waverly Bypass, TN-1, Humphreys County, Tenn., July 12: The proposed project is an improvement of TN-1 from the end of the present four-lane section about 5.2 miles west of TN-13 in downtown Waverly, Tenn. to about 2.7 miles east of TN-13. The project will pass through or around Waverly, Tenn., in Humphreys County and varies from 7.8 to 8.6 miles in length depending on the alternative selected. The proposed improvement will have four traffic carrying lanes throughout its length. (FHWA-TN-EIS-77-08-D; EIS Order No. 80746.)

I-81 Upgrade Between I-77 North/South Junctions, Wythe County, Va., July 10: This proposal concerns the construction of approximately 9 miles of Interstate Highway in Wythe County, Va. This project will complete the last segments of both I-81 and I-77 and will extend from the existing south I-81/I-77 Interchange near Wytheville, to the north I-81/I-77 Interchange near fort Chiswell, which is presently under construction. The project when completed will provide a six lane, controlled access Interstate highway. Alternatives include: (1) No-build, (2) upgrading of Route 11, and (3) five alternatives for partial relocation. (FHWA-VA-EIS-78-01-D; EIS Order No. 80728.)

*Final*

AL-35, Rainsville to Fort Payne, De Kalb County, Ala., July 12: The proposed project consists of the widening, improving, and/or relocating of Alabama Highway No. 35 in De Kalb County, Ala. The 14.62 mile facility will extend from a point 1 mile east of Rainsville to a point 2.2 miles east of Fort Payne. Plans call for a four-lane divided rural highway except for 3 miles, through urban areas, which will be either an undivided five-lane urban type facility or a four-lane with a raised concrete or grassed median. The project will require the relocation of between 38 and 71 residents. (Region 4.) (FHWA-ALA-EIS-77-01-E.) Comments made by: HUD, DOT, USCG, USDA, TVA, DOD, EPA, DOI, State, and local agencies. (EIS Order No. 80740.)

I-90, Hilltop Interchange and Frontage Roads, Grant County, Wash., July 13: The proposed action consists of the construction of: (1) An interchange at location M.P. 143.86, near the point locally known as "hilltop", and (2) approximately 8.02 miles of two lane, north and south frontage roads. The frontage roads will begin in the vicinity of "Hilltop" and extend along and adjacent to Interstate Route 90. The north frontage road will terminate near section corner 11, 12, 14 and 13 on county road S-SW. The south frontage road will terminate near the Beverly-Burke Road undercrossing on county road R-SW. This construction area ends approximately 1 mile southwest of the town of George. (FHWA-WA-EIS-77-01-F.) Comments made by: USDA, COE, HUD, DOI, EPA, State, and local agencies. (EIS Order No. 80748.)

U.S. COAST GUARD

*Draft*

Puget Sound Vessel Traffic/Radar Surveillance, several counties in Washington, July 12: The proposed action consists of improving the existing Puget Sound vessel traffic service (PSVTS) currently consisting of a vessel traffic separation scheme (TSS) and a vessel movement reporting system (WMRS) for the Strait of Juan De Fuca, Rosario Strait, and Puget Sound from Admiralty Inlet to Tacoma. The PSVTS also provides for radar surveillance from Admiralty Inlet to Seattle and mandatory vessel control. The proposal entails the expansion and upgrading of the existing PSVTS radar surveillance system and the extension of radar coverage to include the Strait of Juan De Fuca, Rosario Strait, and Puget Sound south to North Vashon Island. (EIS Order No. 80738.)

VETERANS ADMINISTRATION

Contact: (for housing programs), Mr. Lyman T. Miller, Assistant Director for Construction and Valuation, Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420; 202-389-2691. (Medicine and surgery), Mr. Jon E. Baer, Chief, Environmental Planning Division, Veterans Administration, Washington, D.C.; 202-389-3316.

*Final*

Bay Pines, VA Center, Improvements, Pinellas County, Fla., July 13: This project proposes construction on the existing site of a 520-bed medical and surgical replacement building with support facilities for the Veterans Administration Center at Bay Pines, Fla. A new 120-bed nursing home care unit to supplement the existing nursing home and a 200-bed domiciliary are also proposed. Building 1, presently serving as a hospital, patient building, and building 23, functioning as a clinic, will both be renovated for administration and ancillary services not included in the proposed new medical and surgical building. Comments made by: DOI, AHP, COE, USDA, DOC, State and local agencies. (EIS Order No. 80750.)

[FR Doc. 78-20485 Filed 7-21-78; 8:45 am]

[6730-01]

## FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 608-R]

### MURRAY H. WEISS & SON, INC.

#### Order of Revocation

The bond issued in favor of Murray H. Weiss & Son, Inc., 1115 Main Street, Bridgeport, Conn. 06601, FMC No. 608-R, was canceled effective June 30, 1978.

By letter dated May 2, 1978, Murray H. Weiss & Son, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 608-R would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before June 30, 1978.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Murray H. Weiss & Son, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (revised) section 5.01(d) dated August 8, 1977;

IT IS ORDERED, That Independent Ocean Freight Forwarder License No. 608-R be and is hereby revoked effective June 30, 1978.

IT IS FURTHER ORDERED, That Independent Ocean Freight Forwarder License No. 608-R issued to Murray H. Weiss & Son, Inc. be returned to the Commission for cancellation.

IT IS FURTHER ORDERED, That a copy of this order be published in the FEDERAL REGISTER and served upon Murray H. Weiss & Son, Inc.

ROBERT M. SKALL,
*Deputy Director, Bureau of Certification and Licensing.*

[FR Doc. 78-20436 Filed 7-21-78; 8:45 am]

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[6730-01]

[Independent Ocean Freight Forwarder License No. 1768]

### LAND JOY INTERNATIONAL FORWARDERS, INC.

#### Reinstatement of License

By Federal Maritime Commission order served and published in the FEDERAL REGISTER, Land Joy International Forwarders, Inc.'s Independent Ocean Freight Forwarder License No. 1768 was revoked, effective March 22, 1978, for failure to maintain a valid surety bond on file with the Commission. The order of revocation was served on March 29, 1978.

An appropriate surety bond has been received in favor of Land Joy International Forwarders, Inc., and compliance pursuant to Section 44, Shipping Act, 1916, and section 510.9 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (revised), section 5.01(a), dated August 8, 1977, Independent Ocean Freight Forwarder License No. 1768 shall be reissued to Land Joy International Forwarders, Inc. effective March 22, 1978. A copy of this notice of reinstatement shall be published in the FEDERAL REGISTER and served upon Land Joy International Forwarders, Inc.

ROBERT M. SKALL,
*Deputy, Director, Bureau of Certification and Licensing.*

[FR Doc. 78-20437 Filed 7-21-78; 8:45 am]

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[6730-01]

[Docket No. 78-28]

### "INTERNATIONAL TRADE & DEVELOPMENT INC. and ROBERT H. WALL, INC." v. "SENTINEL LINE & ANCHOR SHIPPING CORP."

#### Filing of Complaint

Notice is hereby given that a complaint filed by International Trade & Development Inc. and Robert H. Wall, Inc. against Sentinel Line & Anchor Shipping Corp. was served July 7, 1978. Complainants allege that respondents failed to perform obligations as a common carrier resulting in violations of Sections 16, 17, and 18 of the Shipping Act.

Hearing in this matter if any is held, shall commence on or before January 17, 1979. The hearing shall include oral testimony and cross examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc. 78-20438 Filed 7-21-78; 8:45 am]

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[6730-01]

### IMPROVING COMMISSION REGULATIONS

#### Report to the President

The following letter was sent to the President on June 30, 1978, with copies to both Houses of Congress. The letter is in response to the President's March 23, 1978, letter requesting a progress report on the Commission's efforts to implement Executive Order 12044.

FRANCIS C. HURNEY,
*Secretary.*

JUNE 30, 1978.

The PRESIDENT,
*The White House,*
*Washington, D.C. 20500.*

DEAR MR. PRESIDENT: This is in response to your March 23, 1978, letter in which you requested a progress report on the Federal Maritime Commission's efforts to implement the Executive Order 12044. Although the FMC, as an independent regulatory agency, is exempt from the order, I fully support its intent and spirit and assure you that the Commission seeks to accomplish its objectives.

All Commission rules are developed through a formal rulemaking process in accordance with the Administrative Procedure Act and are also exempt from the order. Current Commission procedures, however, incorporate many provisions of the order. All rules are approved by the Commission after receiving comments filed by interested members of the public. Although the normal comment period is 30 days, this time is often extended for good cause.

New reporting or recordkeeping requirements must be submitted to GAO for review of the burden imposed. The Commission's rulemaking process includes consideration of such burdens, the need for the proposed regulation, and the direct and indirect effects of the proposed regulation.

I have established a Special Task Force on Commission Organization which is assessing our current organization and procedures.

In the interim, I have instructed the Managing Director and the General Counsel to insure that proposed regulations are written in plain English. With this in mind, a special review was made early in the development of the Commission's recently approved rules concerning financial responsibility for water pollution.

As requested in your letter, a copy of this report is being forwarded to the Congress. It will also be published in the FEDERAL REGISTER.

Respectfully,

RICHARD J. DASCHBACH,
*Chairman.*

[FR Doc. 78-20433 Filed 7-21-78; 8:45 am]

[6210-01]

## FEDERAL RESERVE SYSTEM

### CONSUMER ADVISORY COUNCIL

#### Solicitation of Suggestions for Members of Consumer Advisory Council

The Board of Governors is seeking suggestions from the public for the names of qualified individuals to fill vacancies on its Consumer Advisory Council resulting from expiring terms of nine of its members on December 31, 1978. The Consumer Advisory Council has the responsibility to advise and consult with the Board in the areas of the Board's functions under the Consumer Credit Protection Act and other Consumer-related matters. The Council should be representative of the interests of both creditors and consumers.

Generally, meetings of the Council are held quarterly and are usually a day and a half in duration. Listed below are the names affiliations, location, and terms of office of current Council members:

*Chairman:* The Honorable Leonor K. Sullivan, St. Louis, Mo., December 31, 1978.
*Vice Chairman:* William D. Warren, Dean, UCLA School of Law, Los Angeles, Calif., December 31, 1980.
Roland E. Brandel, Morrison & Foerster, San Francisco, Calif., December 31, 1980.
Agnes H. Bryant, Director City of Detroit Human Rights Department, Detroit, Mich., December 31, 1978.
John G. Bull, President and Chief Executive Officer, National Bancard Corp., Fort Lauderdale, Fla., December 31, 1980.
Robert V. Bullock, Assistant Deputy Attorney General, Office of Attorney General, Frankfort, Ky., December 31, 1979.
Linda M. Cohen, Credit Committee Member, National Organization for Women, Washington, D.C., December 31, 1978.
Robert R. Dockson, Chairman and Chief Executive Officer, California Federal Savings and Loan Association, Los Angeles, Calif., December 31, 1980.
Anne G. Draper, Economist AFL-CIO. Washington, D.C., December 31, 1978.
Carl Felsenfeld, Vice President, Citibank, N.A., New York, N.Y., December 31, 1979.
Jean A. Fox, Member of the Board, Pennsylvania Citizens Consumer Council, Pittsburgh, Pa., December 31, 1979.
Marcia A. Hakala, Human Relations Department, Omaha Public Schools, Omaha, Nebr., December 31, 1980.
Joseph F. Holt III, Special Projects Officer, Weyerhaeuser Mortgage Co., Los Angeles, Calif., December 31, 1978.
Dr. Richard H. Holton, Professor, School of Business Administration, University of California at Berkeley, Berkeley, Calif., December 31, 1979.
Edna DeCoursey Johnson, Executive Director, Northwest Baltimore Corp., Baltimore, Md., December 31, 1979.
Richard F. Kerr, Operating Vice President, Federated Department Stores, Cincinnati, Ohio 45202, December 31, 1978.
Robert J. Klein, Senior Editor, Money Magazine, New York, N.Y., December 31, 1980.
Percy W. Loy, President, Kubla Khan Food Co., Portland, Oreg., December 31, 1979.
R. C. Morgan, President, Government Employees Federal Credit Union of El Paso, El Paso, Tex., December 31, 1980.
Reece A. Overcash, Jr., President, Associates Corp. of North America, Dallas, Tex., December 31, 1978.
Raymond J. Saulnier, Professor (Emeritus) of Economics, Barnard College, Columbia University, New York, N.Y., December 31, 1979.
E. G. Schuhart II, Farmer and Rancher, Dalhart, Tex., December 31, 1980.
Blair C. Shick, Senior Consultant, Arthur D. Little, Inc., Cambridge, Mass., December 31, 1979.
James E. Sutton, Secretary and Corporate Counsel, Chilton Corp., Dallas, Tex., December 31, 1978.
Thomas R. Swan, Vice President, Secretary and Clerk, Maine Savings Bank, Portland, Maine, December 31, 1979.
Anne Gary Taylor, Former President, Sweet Briar College, Alexandria, Va., December 31, 1979.
Richard D. Wagner, President, Wagner Ford Sales, Inc., Simsbury, Conn., December 31, 1980.
Richard L. Wheatley, Jr., Chairman and Chief Executive Officer, University Bank, Stillwater, Okla., December 31, 1978.

Suggestion should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should be received not later than September 1, 1978. In submitting suggestions, it would be helpful if biographical information along the lines of the information requested on the form printed below could be submitted also. Such information will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information.

The Consumer Advisory Council was established by Congress, at the suggestion of the Board, in amendments to the Equal Credit Opportunity Act in 1976. For convenient reference, the applicable provision of the Act follows:

(b) The Board shall establish a Consumer Advisory council to advise and consult with it in the exercise of its functions under the Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

By order of the Board of Governors, July 17, 1978.

THEODORE E. ALLISON,
*Secretary of the Board.*

[FR Doc. 78-20332 Filed 7-21-78; 8:45 am]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Biographical Information Regarding Persons Suggested for Consumer Advisory Council

Name: _____ Phone Number: _____

Address: _____

_____

PRESENT POSITION

Title: _____ Firm Name: _____

Address: _____ Phone Number: _____

_____

_____

FORMER POSITIONS

_____

_____

_____

_____

SPECIAL KNOWLEDGE, INTERESTS, OR EXPERIENCE RELATING TO CONSUMER MATTERS

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_____

_____

_____

OPTIONAL: OTHER INFORMATION OR COMMENTS
(Education, Special Experience or Services, etc.)

_____

_____

_____

_____

(Use reverse side if you wish to extend your remarks.)

[6210-01]

COMANCHE BANCSHARES, INC.

Formation of Bank Holding Company

Comanche Bancshares, Inc., Coldwater, Kans., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 86 percent or more of the voting shares of The Peoples State Bank, Coldwater, Kans. The factors that are considered in acting on the application are set forth in § 3(c) of the act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 1, 1978

Board of Governors of the Federal Reserve System, July 13, 1978

GRIFFITH L. GARWOOD,
*Deputy Secretary of the Board.*

[FR Doc. 78-20333 Filed 7-21-78; 8:45 am]

[6210-01]

FIRST BANCORP OF N.H., INC.

Acquistion of Bank

First Bancorp of N.H., Inc., Manchester, N.H., has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 80 percent or more (less director's qualifying shares) of the voting shares of Wolfeboro National Bank, Wolfeboro, N.H. The factors that are considered in acting on the application are set forth in § 3(c) of the act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 17, 1978.

Board of Governors of the Federal Reserve System, July 18, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary of the Board.*

[FR Doc. 78-20334 Filed 7-21-78; 8:45 am]

[6210-01]

GOLDEN SPREAD FINANCIAL CORP.

Formation of Bank Holding Company

Golden Spread Financial Corp., Tulia, Tex., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80.12 percent or more of the voting shares of First State Bank, Tulia, Tex. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 15, 1978.

Board of Governors of the Federal Reserve System, July 18, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary of the Board.*

[FR Doc. 78-20335 Filed 7-21-78; 8:45 am]

[6210-01]

MARYLAND NATIONAL CORP.

Proposed Acquisition of Mid-Atlantic Life Insurance Co., Inc.

Maryland National Corp., Baltimore, Md., has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8) and § 225.4(b)(2) of the Board's regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of Mid-Atlantic Life Insurance Co., Inc., Phoenix, Ariz., a corporation to formed de novo. Notice of the application was published on June 1, 1978 in the Arizona Republic, a newspaper circulated in Phoenix, Ariz. and June 2, 1978 in the News American, a newspaper circulated in Baltimore, Md.

Applicant states that the proposed subsidiary would engage in the activity of underwriting, as a reinsurer, credit life and credit accident and health insurance on loans and other extensions of credit by subsidiaries of Maryland National Corp. Such activities have been specified by the Board in § 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 § 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 sumarizing 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 Richmond.

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 August 4, 1978.

Board of Governors of the Federal Reserve System, July 17, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary of the Board.*

[FR Doc. 78-20336 Filed 7-21-78; 8:45 am]

[6210-01]

STAMFORD FINANCIAL CORP.

Formation of Bank Holding Company

Stamford Financial Corp., Stamford, Tex., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of The First National Bank Stamford, Tex. The factors that are considered in acting on the application are set forth in § 3(c) of the act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 4, 1978.

Board of Governors of the Federal Reserve System, July 13, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary, of the Board.*

[FR Doc. 78-20337 Filed 7-21-78; 8:45 am]

[1610-01]

## GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collect-

ing information from the public were received by the Regulatory Reports Review Staff, GAO, on July 17, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before August 11, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests an extension without change clearance of Form 65, Employment Inquiry, which is used by the FCC Personnel Division to gather data regarding prospective employees from present and former supervisors. The FCC estimates there are approximately 1,000 respondents annually and that reporting burden averages 15 minutes per response.

The FCC requests an extension without change clearance of Form 753, Application for Restricted Radio- telephone Operator Permit by Declaration, which is filed by applicants when making application for a restricted radiotelephone operator permit pursuant to § 1.83 of the FCC rules and regulations and section 303(L)(1) of the Communications Act. The FCC estimates that approximately 200,000 applications are filed annually and that respondent burden averages 6 minutes per application.

The FCC requests an extension without change clearance of Form 753-C, Statement of Immediate Need of Permit for Safety Purposes. Form 753-C accompanies form 753 and is used when a permit is needed immediately for safety purposes pursuant to § 13.11(b)(ii) of the FCC rules and regulations. The FCC estimates that it receives approximately 30,000 statements annually and that respondent burden averages 6 minutes per response.

The FCC requests an extension without change clearance of Form 759, Verification of Radio Operator License or Permit. Section 13.74(b) of the FCC rules and regulations requires that licensed commercial radio operators on duty at two or more transmitting systems are to post their radio operator license or permit at one station and a valid verified posting statement at each other station in accordance with the rules governing those stations. Form 759 is used as the verified posting statement. The FCC estimates that 14,200 forms are completed annually and that respondent burden averages 6 minutes per form.

NORMAN F. HEYL,
*Regulatory Reports Review Officer.*

[FR Doc. 78-20411 Filed 7-21-78; 8:45 am]

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[4110-02]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of Education

### NATIONAL ADVISORY COMMITTEE ON ADULT EDUCATION

### Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the executive committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, sec. 10(a)(2)).

DATE: August 14, 1978, 8:30 a.m. to 4 p.m.

ADDRESS: National Advisory Council on Adult Education, 425 13th Street NW., Suite 323, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th Street NW., Washington, D.C. 20004, 202-376-8892.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes: NACAE budget; committee organization; and annual program thrusts.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, Room 323, Pennsylvania Building, 425 13th Street NW., Washington, D.C. 20004.

Signed at Washington, D.C., on July 18, 1978.

GARY A. EYRE,
*Executive Director, National Advisory Council on Adult Education.*

[FR Doc. 78-20449 Filed 7-21-78; 8:45 am]

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[4310-02]

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[Ordinance No. 10]

### FORT MOJAVE INDIAN TRIBE, FORT MOJAVE INDIAN RESERVATION

### An Ordinance for the Purpose of Governing the Sale, Purchase, Possession and Consumption of Alcoholic Beverages on the Fort Mojave Indian Reservation

JULY 14, 1978.

In accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 2 (32 FR 13938), and in accordance with the act of August 15, 1953 Pub. L. 277, 83d Congress, 1st Session (67 Stat. 586), I certify that the following ordinance relating to the application of the Federal Indian Liquor Laws on the Fort Mojave Indian Reservation, was adopted on February 6, 1978, by the Fort Mojave Tribal Council which has jurisdiction over the area of Indian country included in the ordinance, reading as set forth below.

FORREST J. GERARD,
*Assistant Secretary—Indian Affairs.*

Pursuant to the authority vested in the tribal council of the Fort Mojave

Indian Tribe by its constitution, the tribal council of the Fort Mojave Indian Tribe takes, adopts, and enacts the following ordinance:

Whereas, title 18, section 1161 of the United States Code provides that certain laws prohibiting the sale and consumption of alcoholic beverages in Indian country are not applicable to an act or transaction which is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Assistant Secretary—Indian Affairs and published in the FEDERAL REGISTER; and

Whereas, authority is delegated to the Fort Mojave Tribal Council in the constitution and bylaws of the Fort Mojave Indian Tribe as approved January 7, 1977, to enact ordinances to regulate the use of the land of the Fort Mojave Reservation.

Now, therefore, the following ordinance is hereby enacted by the Fort Mojave Tribal Council that the sale, purchase, possession, and consumption of alcoholic beverages on the Fort Mojave Indian Reservation shall be lawful; provided, that such sales, purchases, possession, and consumption is in conformity with the applicable laws of the States of Arizona, Nevada, and California. The purchase and sale of alcoholic beverages on the Fort Mojave Reservation shall be limited to those areas designated and approved by the Fort Mojave Tribal Council and within the Fort Mojave Indian Reservation whose boundaries are described in the constitution and bylaws of the Fort Mojave Indian Tribe. The possession and consumption of alcoholic beverages are in conformity with the approved standards for the use and possession of the same on the Fort Mojave Indian Reservation as set forth by the Fort Mojave Tribal Council.

Be it resolved further, that the chairman of the Fort Mojave Tribe is hereby directed to submit the foregoing ordinance, or cause such ordinance to be submitted to the Superintendent of the Colorado River Agency, Bureau of Indian Affairs, for submission to the Assistant Secretary—Indian Affairs, Department of the Interior for certification and publication in the FEDERAL REGISTER.

CERTIFICATION

We the undersigned, as the Chairman and the Secretary of the Fort Mojave Tribal Council, do hereby certify that the Fort Mojave Tribal Council is composed of 7 members of whom 4 constituting a quorum were present at a Special Meeting on this 6th day of February 1978, and that the foregoing ordinance was duly adopted by the affirmative vote of 4 members.

LLEWELLYN BARRACKMAN,
*Chairman.*

[FR Doc. 78-20390 Filed 7-21-78; 8:45 am]

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[4310-09]

**Bureau of Reclamation**

**UINTAH UNIT, CENTRAL UTAH PROJECT**

**Public Hearing on Draft Environmental Statement**

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the authorized Uintah Unit of the Central Utah Project. This statement (INT DES 78-27, dated July 19, 1978) was made available to the public on July 20, 1978.

The draft environmental statement deals with the construction of a northeastern Utah water resource project that would develop water for irrigation and municipal and industrial use in the Uinta Basin. It would also provide benefits for fisheries, recreation, and flood control. Major features proposed include Uinta Reservoir on the Uinta River and the smaller Whiterocks Reservoir on the Whiterocks River. Thirteen high country lakes in Ashley National Forest would be stabilized and 15 miles of an existing canal system rehabilitated.

A public hearing will be held at Bottle Hollow Resort near Fort Duchesne, Utah, to receive comments relating to the draft environmental statement. The hearing will be held in the conference room of the resort, beginning at 3 p.m., Aug. 24, 1978, and will continue until all applicants have been heard.

The draft environmental statement is available for public review in the Regional Office of the Bureau of Reclamation, Room 7223, Federal Building, 125 South State Street (P.O. Box 11568), Salt Lake City, Utah 84111; or at the Central Utah Projects Office, 168 West 100 North (P.O. Box 1338), Provo, Utah 84601. Individual copies of the statement may be obtained without charge by writing to the Regional Director, Salt Lake City. Copies of the statement have also been made available for public inspection at the Duchesne County Library in Duchesne, Utah and at the Uintah County Library in Vernal, Utah.

Individual oral statements at the hearing will be limited to 10 minutes. Any person desiring additional time must secure prior approval. An oral statement may be supplemented by a written statement which may be submitted to the hearing officer at the time of presentation of the oral statement or may be mailed to the Regional Office of the Bureau of Reclamation in Salt Lake City. Each organization wishing to present oral testimony will be limited to one individual unless prior approval is obtained. Approval for additional time or witnesses must be obtained from the Regional Director. To the extent that time is available after presentation of oral statements by those who have given advance notice, the hearing officer will give others present an opportunity to be heard.

Organizations or individuals desiring to present statements at the hearing should contact Regional Director, N. W. Plummer, Bureau of Reclamation, Room 7201, 125 South State Street, Salt Lake City, Utah 84111; telephone 801-524-5536, prior to 4:30 p.m., Aug. 21, 1978. Speakers will be scheduled according to the time mentioned in their letter or telephone request whenever possible. Any scheduled speaker not present when called will lose his privilege in the scheduled order and his name will be recalled at the end of the scheduled speakers. Written comments from those unable to attend the hearing or those wishing to supplement their oral presentation at the hearing may be submitted to the Regional Director until Sept. 5, 1978, for inclusion in the hearing record.

Dated: July 19, 1978.

CLIFFORD I. BARRETT,
*Acting Commissioner of Reclamation.*

[FR Doc. 78-20435 Filed 7-21-78; 8:45 am]

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[4310-70]

**National Park Service**

**FLETCHER'S BOATHOUSE**

**Notice of Intention to Negotiate Concession Contract**

Pursuant to the provisions of section 5 of the act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on August 23, 1978, the Department of the Interior, through the Director of the National Park Service proposes to negotiate a concession contract with Fletcher's Boathouse, authorizing it to continue to provide concession facilities and services for the public at C&O Canal NHP, for a period of approximately five (5) years from date of execution of the contract.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental

Policy Act of 1969. The environmental assessment may be reviewed in the Office of the Superintendent, C&O Canal NHP.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1973, and therefore, pursuant to the act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Fletcher's Boathouse, as the present satisfactory concessioner, the right to meet the terms of responsive offers for the proposed new contract and a preference in the award of the contract, if, thereafter, the offer of Fletcher's Boathouse is substantially equal to others received. The Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before August 23, 1978.

Interested parties should contact the Assistant Director, Special Services, National Park Service, Washington, D.C., 20240, for information as to the requirements of the proposed contract.

Dated: July 17, 1978.

DANIEL J. TOBIN, Jr.,
*Associate Director,*
*National Park Service.*

[FR Doc. 78-20465 Filed 7-21-78; 8:45 am]

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[4310-09]

**Office of the Secretary**

[INT DES 78-27]

**UINTAH UNIT, CENTRAL UTAH PROJECT, UTAH**

**Availability of Draft Environmental Impact Statement**

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on a proposed water resource project that would develop water for irrigation and municipal and industrial uses in north-eastern Utah. It would also benefit fisheries, recreation, and flood control. Written comments may be submitted to the Regional Director (address below) within 45 days of the date of this notice.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202-343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, telephone 303-234-3006.

Office of the Regional Director, Bureau of Reclamation, Federal Building, 125 South State Street, Salt Lake City, Utah 84147, telephone 801-524-5404.

Central Utah Projects Office, Bureau of Reclamation, 160 North 200 West, P.O. Box 1338, Provo, Utah 84601.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: July 19, 1978.

LARRY E. MEIEROTTO,
*Deputy Assistant Secretary*
*of the Interior.*

[FR Doc. 78-20434 Filed 7-21-78; 8:45 am]

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[4310-05]

**Office of Surface Mining Reclamation and Enforcement**

**INDIAN LANDS STUDY**

**Meeting**

Notice is hereby given that a meeting to review and discuss the study outlines for the Indian Lands study, in accordance with section 710 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, will be held on July 27, 1978 at 9 a.m. at the Albuquerque Inn in Albuquerque, N. Mex.

The agenda for the meeting will include discussion of the outline sections on Tribal physical resources and data bases, Tribal legal structures and jurisdiction, demographic and cultural issues, and tentative alternatives for Tribal programs. A separate jurisdictional outline will also be discussed.

The meeting is open to the public. Oral statements may have to be limited to those by invited Tribal representatives depending on the number of people who choose to attend the meeting. Written statements from all interested parties and those who attend the meeting commenting on the discussed items should be mailed on or before August 7, 1978, to Carl Close, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240.

Summary minutes of the meeting will be maintained in the Washington and regional offices of the Office of Surface Mining for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT:

Barbara J. West, Office of Surface Mining, Department of Interior, Washington, D.C. 20240, 202-343-5361.

Dated: July 20, 1978.

WALTER N. HEINE,
*Director, Office of Surface*
*Mining Reclamation and Enforcement.*

[FR Doc. 78-20596 Filed 7-21-78; 8:45 am]

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[4310-05]

**SURFACE COAL MINING AND RECLAMATION OPERATIONS**

**Public Meeting on Preparation of an Environmental Impact Statement**

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Notice of public meeting on preparation of an environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) hereby gives notice of the opportunity for the public to participate in the preparation of the environmental impact statement on the permanent regulatory program regulations which are now being developed by OSM pursuant to section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), (Pub. L. 95-87, 91 Stat. 445, 30 U.S.C. 1201 et seq.). The method for public participation announced in this notice is a public meeting to be held on August 2, 1978, in Washington, D.C. This notice briefly describes those regulations which OSM is considering for analysis in the environmental impact statement (EIS) and sets forth procedures for the receipt of statements and comments at the public meeting and for submission of written statements by those who are unable to attend the public meeting or who wish to revise or supplement their prior statements.

DATE: The public meeting will be held on August 2, 1978, beginning at 9:30 a.m. in the auditorium of the Main Building, Department of the Interior, 18th and C Streets NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Frank Anderson, Chief, Branch of Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-5287.

SUPPLEMENTARY INFORMATION: Section 102 of SMCRA and Executive Order No. 12044 require early and meaningful public participation in the development of OSM regulations. OSM has implemented these requirements through early public notice of the development of the permanent regulatory program for surface coal mining and reclamation operations

(April 26, 1978, 43 FR 17835), and supplementary notices announcing the availability of the draft regulations and opportunities for the public to participate in public meetings and seminars on the draft rules (June 15, 1978, 43 FR 25881; July 5, 1978, 43 FR 29012). At this time members of the public, representatives of organizations and public officials are invited to attend the public meeting and submit their comments and recommendations concerning the scope, content and format of the EIS on the permanent program regulations.

Preparation of an EIS on the permanent program regulations is required by section 702(d) of SMCRA and section 102(2)(C) of the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4332. OSM is presently considering including for discussion and analysis in the EIS those regulations which implement Sections 502, 503, 504, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 524, 527, 528, 529, 708, 711, 717, 719 of SMCRA.

It is expected that not all of the regulations implementing these sections of the act will generate environmental impacts. Nevertheless, these regulations will be described and their environmental impacts analyzed to the extent possible to meet the full disclosure requirements of NEPA.

The draft EIS is expected to be available on or about September 15, 1978, and a public hearing on the draft EIS will be held shortly thereafter. The final EIS is expected to be available on or about December 15, 1978. Notices of the availability of the draft and final EIS's and of the date and location for the public hearing on the draft EIS will be published in the FEDERAL REGISTER.

The public meeting on August 2, 1978, will begin at 9:30 a.m. and will terminate at 6 p.m. or when there are no longer any speakers present to be heard, whichever occurs first. Those who desire to speak at the public meeting may be scheduled on the program in advance by telephoning Patricia Foulk in Washington, D.C., 202-343-4719. Other attendees may indicate their desire to speak by signing the list which will be available before the meeting begins. After the scheduled speakers have been heard, other speakers will be heard in the order in which they have signed the list. The meeting will be informal and individual oral statements will be limited to 15 minutes. Speakers may provide a written copy of their oral statements. Those who are unable to attend the meeting and those who wish to submit additional written comments and recommendations may mail such materials to Mr. Frank Anderson at the address above noted. Written statements must be received by 5 p.m. on August 14, 1978. Speakers and persons or organizations who submit written materials are encouraged to support their comments and recommendations by reference to technical literature, SMCRA, NEPA, the legislative history and other source materials.

All oral and written statements submitted at the public meeting and received by 5 p.m. on August 14, 1978, will be included in the public record and will be considered by OSM in the preparation of the EIS. All such materials and a verbatim transcrip of the oral statements will be available for public inspection at OSM headquarters in Washington, D.C.

Dated: July 20, 1978.

WALTER N. HEINE,
*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 78-20595 Filed 7-21-78; 8:45 am]

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[7020-02]

## INTERNATIONAL COMMUNICATION AGENCY

### CULTURALLY SIGNIFICANT WORKS OF ART

#### Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985) and Executive Order 12047 of March 27, 1978 (43 FR 61, March 29, 1978), I hereby determine that (1) the 162 objects described in the list[1] filed as a part of this determination imported from Egypt, Greece, Belgium, United Kingdom, Sudan, Federal Republic of Germany, German Democratic Republic, and Poland, pursuant to various agreements between the Brooklyn Museum and Karl Marx Universität, Leipzig Ägyptisches Museum; National Museum, Warsaw, Poland; Aswan Museum, Egypt; Egyptian Museum, Egypt; Sudan National Museum; University of Khartoum; Musées Royaux d'Art et d'Histoire, Belgium; Fitzwilliam Museum, England; Merseyside County Musuem, England; land; University of Liverpool, England; British Museum, England; Staatliche Sammlung Agyptischer Kunst, Munich, Federal Republic of Germany; Ashmolean Museum of Art and Archaeology, England; Bolton Museum and Art Gallery, England; The National Museum, Athens, Greece; and the Ägyptisches Museum, Staatliche Museen zu Berlin, German Demoncratic Republic, for the temporary exhibition without profit within the United States are of cultural significance, and that (2) the temporary exhibition or display of such objects entitled "Africa in Antiquity: The Arts of Ancient Nubia and the Sudan" at the Brooklyn Museum, Brooklyn, New York, beginning on or about September 30, 1978, to on or about December 31, 1978; Seattle Art Museum, Seattle, Wash., beginning on or about February 15, 1979, to on or about April 15, 1979, and at the New Orleans Museum of Art, New Orleans, La., beginning on or about May 19, 1979, to on or about August 12, 1979, is in the National interest.

Public notice of this determination is ordered to be published in the FEDERAL REGISTER.

JOHN E. REINHARDT,
*Director, International Communication Agency.*

JULY 19, 1978.

[FR Doc. 78-20624 Filed 7-21-78; 11:11 am]

[1] Itemized list of objects included in the Exhibition "Africa in Antiquity: The Arts of Ancient Nubia and the Sudan" filed as part of the original document.

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[7020-02]

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-42]

### CERTAIN ELECTRIC SLOW COOKERS

#### Change of Commission Investigative Attorney

Please take note that the Commission investigative attorney on investigation No. 337-TA-42, Certain Electric Slow Cookers, will be Robert M. M. Seto, Esq. Please serve Mr. Seto with all future papers filed in this investigation.

ROBERT M. M. SETO,
*Commission Investigative Attorney, Office of Legal Services.*

[FR Doc. 78-20439 Filed 7-21-78; 8:45 am]

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[7020-02]

[Investigation No. 337-TA-40]

### MONUMENTAL WOOD WINDOWS

#### Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: July 18, 1978.

DONALD K. DUVALL,
*Chief Administrative Law Judge.*

[FR Doc. 78-20440 Filed 7-21-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-49]

CERTAIN ATTACHÉ CASES

Change of Commission Investigative Attorney

Please take note that the Commission investigative attorney on Investigation No. 337-TA-49, Certain Attache Cases, will be Robert M. M. Seto, Esq. Please serve Mr. Seto with all future papers filed in connection with this investigation.

ROBERT M. M. SETO,
*Commission Investigative Attorney, Office of Legal Services.*

[FR Doc. 78-20441 Filed 7-21-78; 8:45 am]

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[7020-02]

[Investigation No. 337-TA-50]

CERTAIN SYNTHETIC GEMSTONES

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: July 18, 1978.

DONALD K. DUVALL,
*Chief Administrative Law Judge.*

[FR Doc. 78-20442 Filed 7-21-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-51]

CERTAIN CIGARETTE HOLDERS

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: July 18, 1978.

DONALD K. DUVALL,
*Chief Administrative Law Judge.*

[FR Doc. 78-20443 Filed 7-21-78; 8:45 am]

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[7020-02]

[Investigation No. 337-TA-53]

CERTAIN SWIVEL HOOKS AND MOUNTING BRACKETS

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: July 18, 1978.

DONALD K. DUVALL,
*Chief Administrative Law Judge.*

[FR Doc. 78-20444 Filed 7-21-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-54]

CERTAIN MULTICELLULAR PLASTIC FILM

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: July 18, 1978.

DONALD K. DUVALL,
*Chief Administrative Law Judge.*

[FR Doc. 78-20445 Filed 7-21-78; 8:45 am]

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[7020-02]

[303-TA-3]

CERTAIN FISH FROM CANADA

Amendment of Notice of Investigation, Public Hearing, and Request for Written Views

The U.S. International Trade Commission's Notice of Investigation and Hearing on Certain Fish from Canada, investigation No. 303-TA-3 under section 303(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(b)), published in the FEDERAL REGISTER on July 19, 1978 (43 F.R. 31072), is amended by changing the time of the hearing from 10 p.m., e.d.t., to 10 a.m., e.d.t.

By order of the Commission.

Issued: July 19, 1978

KENNETH R. MASON,
*Secretary.*

[FR Doc. 78-20483 Filed 7-21-78; 8:45 am]

[7536-01]

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### ADVISORY COMMITTEE; HUMANITIES PANEL

#### Meeting

JULY 14, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in the 11th floor conference room from 9 a.m. to 5:30 p.m. on August 10, 1978.

The purpose of the meeting is to review applications in the social sciences submitted to the National Endowment for the Humanities for projects beginning after September 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
*Advisory Committee Management Officer.*

[FR Doc. 78-20453 Filed 7-21-78; 8:45 am]

[7536-01]

### ADVISORY COMMITTEE; HUMANITIES PANEL

#### Meeting

JULY 18, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Institutes Panel will be held at 806 Fifteenth Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on August 25, 1978.

The purpose of the meeting is to review Humanities Institutes applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Managment Officer, Mr. Stephen J. McCleary, 806 Fifteenth Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
*Advisory Committee, Management Officer.*

[FR Doc. 78-20454 Filed 7-21-78; 8:45 am]

[7590-01]

## NUCLEAR REGULATORY COMMISSION

[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 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, 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 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 3,800 megawatts thermal, with an equivalent net

eletrical output of approximately 1,307 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. STOLE,
*Chief, Light Water Reactors Branch No. 1, Division of Project Management.*

[FR Doc. 78-16334 Filed 6-13-78; 8:45 am]

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[7590-01]

[Docket Nos. 50-510 and 50-511]

GULF STATES UTILITIES CO.

**Availability of Final Environmental Statement Relating to Site Suitability for the Blue Hills Station, Unit Nos. 1 and 2**

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the final environmental statement prepared by the Commission's Office of Nuclear Reactor Regulation, related to the suitability of Site G proposed for eventual construction of Blue Hills Station, Unit Nos. 1 and 2, in Newton County, Tex., is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Newton Public Library, Newton, Tex. 77034. The final environmental statement is also being made available at the Deep East Texas Development Council, 272 East Lamar Street, Jasper, Tex. 75951.

The notice of availability of the draft environmental statement for the Blue Hills Station, Unit Nos. 1 and 2 and requests for comments from interested persons was published in the FEDERAL REGISTER on June 9, 1977 (41 FR 29571). The comments received from Federal, State, and local agencies and interested members of the public have been included as an appendix to the final environmental statement.

Copies of the final environmental statement (Document No. NUREG-0449) may be purchased, at current rates, from the National Technical Information Service, Springfield, Va. 22161 (printed copy: $10.75; microfiche: $3).

Dated at Bethesda, Md., this 17th day of July 1978.

For the Nuclear Regulatory Commission.

RONALD L. BALLARD,
*Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.*

[FR Doc. 78-20524 Filed 7-21-78; 8:45 am]

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[7710-12]

## POSTAL SERVICE

### INTERNATIONAL EXPRESS MAIL RATES

**Changes in Rates**

AGENCY: Postal Service.

ACTION: Final International Express Mail Rates.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is changing the rates for International Express Mail to the levels indicated in the tables below. International Express Mail service began with service to the United Kingdom in 1971 and expanded to other countries over a 4-year period. The changes, which generally increase the rates, reflect the generally increasing costs to the Postal Service of providing the service. They are the first general rate changes made since service began.

EFFECTIVE DATE: August 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Buford L. Knowles, 202-245-4498.

SUPPLEMENTARY INFORMATION: On June 16, 1978, the Postal Service published for comment in the FEDERAL REGISTER proposed changes to the rates of postage for International Express Mail. 43 FR 26033. Interested persons were invited to submit written data, views, or arguments concerning these changes. However, no comments were received. Accordingly the Postal Service adopts without change the rates of postage for International Express Mail set out in the following tables (designated tables 8-2 through 8-9) for inclusion in publication 42, International Mail, incorporated by reference, 39 CFR 10.1.

(39 U.S.C. 401, 403, 404(2), 407, 410(a).)

W. ALLEN SANDERS,
*Assistant General Counsel.*

# AUSTRALIA
## INTERNATIONAL EXPRESS MAIL
## CUSTOM DESIGNED SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $29.15 | $29.18 | $29.22 | $29.26 | $29.30 | $29.35 | $29.40 |
| 2 | 32.52 | 32.58 | 32.66 | 32.74 | 32.82 | 32.92 | 33.02 |
| 3 | 35.89 | 35.98 | 36.10 | 36.22 | 36.34 | 36.49 | 36.64 |
| 4 | 39.26 | 39.38 | 39.54 | 39.70 | 39.86 | 40.06 | 40.26 |
| 5 | 42.63 | 42.78 | 42.98 | 43.18 | 43.38 | 43.63 | 43.88 |
| 6 | 46.00 | 46.18 | 46.42 | 46.66 | 46.90 | 47.20 | 47.50 |
| 7 | 49.37 | 49.58 | 49.86 | 50.14 | 50.42 | 50.77 | 51.12 |
| 8 | 52.74 | 52.98 | 53.30 | 53.62 | 53.94 | 54.34 | 54.74 |
| 9 | 56.11 | 56.38 | 56.74 | 57.10 | 57.46 | 57.91 | 58.36 |
| 10 | 59.48 | 59.78 | 60.18 | 60.58 | 60.98 | 61.48 | 61.98 |
| 11 | 62.85 | 63.18 | 63.62 | 64.06 | 64.50 | 65.05 | 65.60 |
| 12 | 66.22 | 66.58 | 67.06 | 67.54 | 68.02 | 68.62 | 69.22 |
| 13 | 69.59 | 69.98 | 70.50 | 71.02 | 71.54 | 72.19 | 72.84 |
| 14 | 72.96 | 73.38 | 73.94 | 74.50 | 75.06 | 75.76 | 76.46 |
| 15 | 76.33 | 76.78 | 77.38 | 77.98 | 78.58 | 79.33 | 80.08 |
| 16 | 79.70 | 80.18 | 80.82 | 81.46 | 82.10 | 82.90 | 83.70 |
| 17 | 83.07 | 83.58 | 84.26 | 84.94 | 85.62 | 86.47 | 87.32 |
| 18 | 86.44 | 86.98 | 87.70 | 88.42 | 89.14 | 90.04 | 90.94 |
| 19 | 89.81 | 90.38 | 91.14 | 91.90 | 92.66 | 93.61 | 94.56 |
| 20 | 93.18 | 93.78 | 94.58 | 95.38 | 96.18 | 97.18 | 98.18 |
| 21 | 96.55 | 97.18 | 98.02 | 98.86 | 99.70 | 100.75 | 101.80 |
| 22 | 99.92 | 100.58 | 101.46 | 102.34 | 103.22 | 104.32 | 105.42 |
| 23 | 103.29 | 103.98 | 104.90 | 105.82 | 106.74 | 107.89 | 109.04 |
| 24 | 106.66 | 107.38 | 108.34 | 109.30 | 110.26 | 111.46 | 112.66 |
| 25 | 110.03 | 110.78 | 111.78 | 112.78 | 113.78 | 115.03 | 116.28 |
| 26 | 113.40 | 114.18 | 115.22 | 116.26 | 117.30 | 118.60 | 119.90 |
| 27 | 116.77 | 117.58 | 118.66 | 119.74 | 120.82 | 122.17 | 123.52 |
| 28 | 120.14 | 120.98 | 122.10 | 123.22 | 124.34 | 125.74 | 127.14 |
| 29 | 123.51 | 124.38 | 125.54 | 126.70 | 127.86 | 129.31 | 130.76 |
| 30 | 126.88 | 127.78 | 128.98 | 130.18 | 131.38 | 132.88 | 134.38 |
| 31 | 130.25 | 131.18 | 132.42 | 133.66 | 134.90 | 136.45 | 138.00 |
| 32 | 133.62 | 134.58 | 135.86 | 137.14 | 138.42 | 140.02 | 141.62 |
| 33 | 136.99 | 137.98 | 139.30 | 140.62 | 141.94 | 143.59 | 145.24 |

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.

2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

# BELGIUM, FRANCE, NETHERLANDS, & UNITED KINGDOM

## INTERNATIONAL EXPRESS MAIL CUSTOM DESIGNED SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $27.85 | $27.88 | $27.92 | $27.96 | $28.00 | $28.05 | $28.10 |
| 2 | 29.92 | 29.98 | 30.06 | 30.14 | 30.22 | 30.32 | 30.42 |
| 3 | 31.99 | 32.08 | 32.20 | 32.32 | 32.44 | 32.59 | 32.74 |
| 4 | 34.06 | 34.18 | 34.34 | 34.50 | 34.66 | 34.86 | 35.06 |
| 5 | 36.13 | 36.28 | 36.48 | 36.68 | 36.88 | 37.13 | 37.38 |
| 6 | 38.20 | 38.38 | 38.62 | 38.86 | 39.10 | 39.40 | 39.70 |
| 7 | 40.27 | 40.48 | 40.76 | 41.04 | 41.32 | 41.67 | 42.02 |
| 8 | 42.34 | 42.58 | 42.90 | 43.22 | 43.54 | 43.94 | 44.34 |
| 9 | 44.41 | 44.68 | 45.04 | 45.40 | 45.76 | 46.21 | 46.66 |
| 10 | 46.48 | 46.78 | 47.18 | 47.58 | 47.98 | 48.48 | 48.98 |
| 11 | 48.55 | 48.88 | 49.32 | 49.76 | 50.20 | 50.75 | 51.30 |
| 12 | 50.62 | 50.98 | 51.46 | 51.94 | 52.42 | 53.02 | 53.62 |
| 13 | 52.69 | 53.08 | 53.60 | 54.12 | 54.64 | 55.29 | 55.94 |
| 14 | 54.76 | 55.18 | 55.74 | 56.30 | 56.86 | 57.56 | 58.26 |
| 15 | 56.83 | 57.28 | 57.88 | 58.48 | 59.08 | 59.83 | 60.58 |
| 16 | 58.90 | 59.38 | 60.02 | 60.66 | 61.30 | 62.10 | 62.90 |
| 17 | 60.97 | 61.48 | 62.16 | 62.84 | 63.52 | 64.37 | 65.22 |
| 18 | 63.04 | 63.58 | 64.30 | 65.02 | 65.74 | 66.64 | 67.54 |
| 19 | 65.11 | 65.68 | 66.44 | 67.20 | 67.96 | 68.91 | 69.86 |
| 20 | 67.18 | 67.78 | 68.58 | 69.38 | 70.18 | 71.18 | 72.18 |
| 21 | 69.25 | 69.88 | 70.72 | 71.56 | 72.40 | 73.45 | 74.50 |
| 22 | 71.32 | 71.98 | 72.86 | 73.74 | 74.62 | 75.72 | 76.82 |
| 23 | 73.39 | 74.08 | 75.00 | 75.92 | 76.84 | 77.99 | 79.14 |
| 24 | 75.46 | 76.18 | 77.14 | 78.10 | 79.06 | 80.26 | 81.46 |
| 25 | 77.53 | 78.28 | 79.28 | 80.28 | 81.28 | 82.53 | 83.78 |
| 26 | 79.60 | 80.38 | 81.42 | 82.46 | 83.50 | 84.80 | 86.10 |
| 27 | 81.67 | 82.48 | 83.56 | 84.64 | 85.72 | 87.07 | 88.42 |
| 28 | 83.74 | 84.58 | 85.70 | 86.82 | 87.94 | 89.34 | 90.74 |
| 29 | 85.81 | 86.68 | 87.84 | 89.00 | 90.16 | 91.61 | 93.06 |
| 30 | 87.88 | 88.78 | 89.98 | 91.18 | 92.38 | 93.88 | 95.38 |
| 31 | 89.95 | 90.88 | 92.12 | 93.36 | 94.60 | 96.15 | 97.70 |
| 32 | 92.02 | 92.98 | 94.26 | 95.54 | 96.82 | 98.42 | 100.02 |
| 33 | 94.09 | 95.08 | 96.40 | 97.72 | 99.04 | 100.69 | 102.34 |

NOTES:
1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

# BRAZIL

## INTERNATIONAL EXPRESS MAIL
## CUSTOM DESIGNED SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | .7 | 8 | 9 |
| 1 | $29.23 | $29.26 | $29.30 | $29.34 | $29.38 | $29.43 | $29.48 |
| 2 | 32.68 | 32.74 | 32.82 | 32.90 | 32.98 | 33.08 | 33.18 |
| 3 | 36.13 | 36.22 | 36.34 | 36.46 | 36.58 | 36.73 | 36.88 |
| 4 | 39.58 | 39.70 | 39.86 | 40.02 | 40.18 | 40.38 | 40.58 |
| 5 | 43.03 | 43.18 | 43.38 | 43.58 | 43.78 | 44.03 | 44.28 |
| 6 | 46.48 | 46.66 | 46.90 | 47.14 | 47.38 | 47.68 | 47.98 |
| 7 | 49.93 | 50.14 | 50.42 | 50.70 | 50.98 | 51.33 | 51.68 |
| 8 | 53.38 | 53.62 | 53.94 | 54.26 | 54.58 | 54.98 | 55.38 |
| 9 | 56.83 | 57.10 | 57.46 | 57.82 | 58.18 | 58.63 | 59.08 |
| 10 | 60.28 | 60.58 | 60.98 | 61.38 | 61.78 | 62.28 | 62.78 |
| 11 | 63.73 | 64.06 | 64.50 | 64.94 | 65.38 | 65.93 | 66.48 |
| 12 | 67.18 | 67.54 | 68.02 | 68.50 | 68.98 | 69.58 | 70.18 |
| 13 | 70.63 | 71.02 | 71.54 | 72.06 | 72.58 | 73.23 | 73.88 |
| 14 | 74.08 | 74.50 | 75.06 | 75.62 | 76.18 | 76.88 | 77.58 |
| 15 | 77.53 | 77.98 | 78.58 | 79.18 | 79.78 | 80.53 | 81.28 |
| 16 | 80.98 | 81.46 | 82.10 | 82.74 | 83.38 | 84.18 | 84.98 |
| 17 | 84.43 | 84.94 | 85.62 | 86.30 | 86.98 | 87.83 | 88.68 |
| 18 | 87.88 | 88.42 | 89.14 | 89.86 | 90.58 | 91.48 | 92.38 |
| 19 | 91.33 | 91.90 | 92.66 | 93.42 | 94.18 | 95.13 | 96.08 |
| 20 | 94.78 | 95.38 | 96.18 | 96.98 | 97.78 | 98.78 | 99.78 |
| 21 | 98.23 | 98.86 | 99.70 | 100.54 | 101.38 | 102.43 | 103.48 |
| 22 | 101.68 | 102.34 | 103.22 | 104.10 | 104.98 | 106.08 | 107.18 |
| 23 | 105.13 | 105.82 | 106.74 | 107.66 | 108.58 | 109.73 | 110.88 |
| 24 | 108.58 | 109.30 | 110.26 | 111.22 | 112.18 | 113.38 | 114.58 |
| 25 | 112.03 | 112.78 | 113.78 | 114.78 | 115.78 | 117.03 | 118.28 |
| 26 | 115.48 | 116.26 | 117.30 | 118.34 | 119.38 | 120.68 | 121.98 |
| 27 | 118.93 | 119.74 | 120.82 | 121.90 | 122.98 | 124.33 | 125.68 |
| 28 | 122.38 | 123.22 | 124.34 | 125.46 | 126.58 | 127.98 | 129.38 |
| 29 | 125.83 | 126.70 | 127.86 | 129.02 | 130.18 | 131.63 | 133.08 |
| 30 | 129.28 | 130.18 | 131.38 | 132.58 | 133.78 | 135.28 | 136.78 |

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 31 | 132.73 | 133.66 | 134.90 | 136.14 | 137.38 | 138.93 | 140.48 |
| 32 | 136.18 | 137.14 | 138.42 | 139.70 | 140.98 | 142.58 | 144.18 |
| 33 | 139.63 | 140.62 | 141.94 | 143.26 | 144.58 | 146.23 | 147.88 |
| 34 | 143.08 | 144.10 | 145.46 | 146.82 | 148.18 | 149.88 | 151.58 |
| 35 | 146.53 | 147.58 | 148.98 | 150.38 | 151.78 | 153.53 | 155.28 |
| 36 | 149.98 | 151.06 | 152.50 | 153.94 | 155.38 | 157.18 | 158.98 |
| 37 | 153.43 | 154.54 | 156.02 | 157.50 | 158.98 | 160.83 | 162.68 |
| 38 | 156.88 | 158.02 | 159.54 | 161.06 | 162.58 | 164.48 | 166.38 |
| 39 | 160.33 | 161.50 | 163.06 | 164.62 | 166.18 | 168.13 | 170.08 |
| 40 | 163.78 | 164.98 | 166.58 | 168.18 | 169.78 | 171.78 | 173.78 |
| 41 | 167.23 | 168.46 | 170.10 | 171.74 | 173.38 | 175.43 | 177.48 |
| 42 | 170.68 | 171.94 | 173.62 | 175.30 | 176.98 | 179.80 | 181.18 |
| 43 | 174.13 | 175.42 | 177.14 | 178.86 | 180.58 | 182.73 | 184.88 |
| 44 | 177.58 | 178.90 | 180.66 | 182.42 | 184.18 | 186.38 | 188.58 |
| 45 | 181.03 | 182.38 | 184.18 | 185.98 | 187.78 | 190.03 | 192.28 |
| 46 | 184.48 | 185.86 | 187.70 | 189.54 | 191.38 | 193.68 | 195.98 |
| 47 | 187.93 | 189.34 | 191.22 | 193.10 | 194.98 | 197.33 | 199.68 |
| 48 | 191.38 | 192.82 | 194.74 | 196.66 | 198.58 | 200.98 | 203.38 |
| 49 | 194.83 | 196.30 | 198.26 | 200.22 | 202.18 | 204.63 | 207.08 |
| 50 | 198.28 | 199.78 | 201.78 | 203.78 | 205.78 | 208.28 | 210.78 |

**NOTES:** 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

# HONG KONG
## INTERNATIONAL EXPRESS MAIL
## CUSTOM DESIGNED SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $28.85 | $28.88 | $28.92 | $28.96 | $29.00 | $29.05 | $29.10 |
| 2 | 31.92 | 31.98 | 32.06 | 32.14 | 32.22 | 32.32 | 32.42 |
| 3 | 34.99 | 35.08 | 35.20 | 35.32 | 35.44 | 35.59 | 35.74 |
| 4 | 38.06 | 38.18 | 38.34 | 38.50 | 38.66 | 38.86 | 39.06 |
| 5 | 41.13 | 41.28 | 41.48 | 41.68 | 41.88 | 42.13 | 42.38 |
| 6 | 44.20 | 44.38 | 44.62 | 44.86 | 45.10 | 45.40 | 45.70 |
| 7 | 47.27 | 47.48 | 47.76 | 48.04 | 48.32 | 48.67 | 49.02 |
| 8 | 50.34 | 50.58 | 50.90 | 51.22 | 51.54 | 51.94 | 52.34 |
| 9 | 53.41 | 53.68 | 54.04 | 54.40 | 54.76 | 55.21 | 55.66 |
| 10 | 56.48 | 56.78 | 57.18 | 57.58 | 57.98 | 58.48 | 58.98 |
| 11 | 59.55 | 59.88 | 60.32 | 60.76 | 61.20 | 61.75 | 62.30 |
| 12 | 62.62 | 62.98 | 63.46 | 63.94 | 64.42 | 65.02 | 65.62 |
| 13 | 65.69 | 66.08 | 66 60 | 67.12 | 67.64 | 68.29 | 68.94 |
| 14 | 68.76 | 69.18 | 69.74 | 70.30 | 70.86 | 71.56 | 72.26 |
| 15 | 71.83 | 72.28 | 72.88 | 73.48 | 74.08 | 74.83 | 75.58 |
| 16 | 74.90 | 75.38 | 76.02 | 76.66 | 77.30 | 78.10 | 78.90 |
| 17 | 77.97 | 78.48 | 79.16 | 79.84 | 80.52 | 81.37 | 82.22 |
| 18 | 81.04 | 81.58 | 82.30 | 83.02 | 83.74 | 84.64 | 85.54 |
| 19 | 84.11 | 84.68 | 85.44 | 86.20 | 86.96 | 87.91 | 88.86 |
| 20 | 87.18 | 87.78 | 88.58 | 89.38 | 90.18 | 91.18 | 92.18 |
| 21 | 90.25 | 90.88 | 91.72 | 92.56 | 93.40 | 94.45 | 95.50 |
| 22 | 93.32 | 93.98 | 94.86 | 95.74 | 96.62 | 97.72 | 98.82 |
| 23 | 96.39 | 97.08 | 98.00 | 98.92 | 99.84 | 100.99 | 102.14 |
| 24 | 99.46 | 100.18 | 101.14 | 102.10 | 103.06 | 104.26 | 105.46 |
| 25 | 102.53 | 103.28 | 104.28 | 105.28 | 106.28 | 107.53 | 108.78 |
| 26 | 105.60 | 106.38 | 107.42 | 108.46 | 109.50 | 110.80 | 112.10 |
| 27 | 108.67 | 109.48 | 110.56 | 111.64 | 112.72 | 114.07 | 115.42 |
| 28 | 111.74 | 112.58 | 113.70 | 114.82 | 115.94 | 117.34 | 118.74 |
| 29 | 114.81 | 115.68 | 116.84 | 118.00 | 119.16 | 120.61 | 122.06 |
| 30 | 117.88 | 118.78 | 119.98 | 121.18 | 122.38 | 123.88 | 125.38 |
| 31 | 120.95 | 121.88 | 123.12 | 124.36 | 125.60 | 127.15 | 128 70 |
| 32 | 124.02 | 124.98 | 126.26 | 127.54 | 128.82 | 130.42 | 132.02 |
| 33 | 127.09 | 128.08 | 129.40 | 130.72 | 132.04 | 133.69 | 135.34 |

**NOTES:** 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
2) Pick-up is available under a Service Agreement for an added charge of $5 25 for each pick-up stop, regardless of the number of pieces picked up Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

# JAPAN

## INTERNATIONAL EXPRESS MAIL CUSTOM DESIGNED SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $23.62 | $23.65 | $23.69 | $23.73 | $23.77 | $23.82 | $23.87 |
| 2 | 26.71 | 26.77 | 26.85 | 26.93 | 27.01 | 27.11 | 27.21 |
| 3 | 29.80 | 29.89 | 30.10 | 30.13 | 30.25 | 30.40 | 30.55 |
| 4 | 32.89 | 33.01 | 33.17 | 33.33 | 33.49 | 33.69 | 33.89 |
| 5 | 35.98 | 36.13 | 36.33 | 36.53 | 36.73 | 36.98 | 37.23 |
| 6 | 39.07 | 39.25 | 39.49 | 39.73 | 39.97 | 40.27 | 40.57 |
| 7 | 42.16 | 42.37 | 42.65 | 42.93 | 43.21 | 43.56 | 43.91 |
| 8 | 45.25 | 45.49 | 45.81 | 46.13 | 46.45 | 46.85 | 47.25 |
| 9 | 48.34 | 48.61 | 48.97 | 49.33 | 49.69 | 50.14 | 50.59 |
| 10 | 51.43 | 51.73 | 52.13 | 52.53 | 52.93 | 53.43 | 53.93 |

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

# AUSTRALIA
## INTERNATIONAL EXPRESS MAIL ON DEMAND SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $18.87 | $18.90 | $18.94 | $18.98 | $19.02 | $19.07 | $19.12 |
| 2 | 22.24 | 22.30 | 22.38 | 22.46 | 22.54 | 22.64 | 22.74 |
| 3 | 25.61 | 25.70 | 25.82 | 25.94 | 26.06 | 26.21 | 26.36 |
| 4 | 28.98 | 29.10 | 29.26 | 29.42 | 29.58 | 29.78 | 29.98 |
| 5 | 32.35 | 32.50 | 32.70 | 32.90 | 33.10 | 33.35 | 33.60 |
| 6 | 35.72 | 35.90 | 36.14 | 36.38 | 36.62 | 36.92 | 37.22 |
| 7 | 39.09 | 39.30 | 39.58 | 39.86 | 40.14 | 40.49 | 40.84 |
| 8 | 42.46 | 42.70 | 43.02 | 43.34 | 43.66 | 44.06 | 44.46 |
| 9 | 45.83 | 46.10 | 46.46 | 46.82 | 47.18 | 47.63 | 48.08 |
| 10 | 49.20 | 49.50 | 49.90 | 50.30 | 50.70 | 51.20 | 51.70 |
| 11 | 52.57 | 52.90 | 53.34 | 53.78 | 54.22 | 54.77 | 55.32 |
| 12 | 55.94 | 56.30 | 56.78 | 57.26 | 57.74 | 58.34 | 58.94 |
| 13 | 59.31 | 59.70 | 60.22 | 60.74 | 61.26 | 61.91 | 62.56 |
| 14 | 62.68 | 63.10 | 63.66 | 64.22 | 64.78 | 65.48 | 66.18 |
| 15 | 66.05 | 66.50 | 67.10 | 67.70 | 68.30 | 69.05 | 69.80 |
| 16 | 69.42 | 69.90 | 70.54 | 71.18 | 71.82 | 72.62 | 73.42 |
| 17 | 72.79 | 73.30 | 73.98 | 74.66 | 75.34 | 76.19 | 77.04 |
| 18 | 76.16 | 76.70 | 77.42 | 78.14 | 78.86 | 79.76 | 80.66 |
| 19 | 79.53 | 80.10 | 80.86 | 81.62 | 82.38 | 83.33 | 84.28 |
| 20 | 82.90 | 83.50 | 84.30 | 85.10 | 85.90 | 86.90 | 87.90 |
| 21 | 86.27 | 86.90 | 87.74 | 88.58 | 89.42 | 90.47 | 91.52 |
| 22 | 89.64 | 90.30 | 91.18 | 92.06 | 92.94 | 94.04 | 95.14 |
| 23 | 93.01 | 93.70 | 94.62 | 95.54 | 96.46 | 97.61 | 98.76 |
| 24 | 96.38 | 97.10 | 98.06 | 99.02 | 99.98 | 101.18 | 102.38 |
| 25 | 99.75 | 100.50 | 101.50 | 102.50 | 103.50 | 104.75 | 106.00 |
| 26 | 103.12 | 103.90 | 104.94 | 105.98 | 107.02 | 108.32 | 109.62 |
| 27 | 106.49 | 107.30 | 108.38 | 109.46 | 110.54 | 111.89 | 113.24 |
| 28 | 109.86 | 110.70 | 111.82 | 112.94 | 114.06 | 115.46 | 116.86 |
| 29 | 113.23 | 114.10 | 115.26 | 116.42 | 117.58 | 119.03 | 120.48 |
| 30 | 116.60 | 117.50 | 118.70 | 119.90 | 121.10 | 122.60 | 124.10 |
| 31 | 119.97 | 120.90 | 122.14 | 123.38 | 124.62 | 126.17 | 127.72 |
| 32 | 123.34 | 124.30 | 125.58 | 126.86 | 128.14 | 129.74 | 131.34 |
| 33 | 126.71 | 127.70 | 129.02 | 130.34 | 131.66 | 133.31 | 134.96 |

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

# HONG KONG
## INTERNATIONAL EXPRESS MAIL ON DEMAND SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $18.57 | $18.60 | $18.64 | $18.68 | $18.72 | $18.77 | $18.82 |
| 2 | 21.64 | 21.70 | 21.78 | 21.86 | 21.94 | 22.04 | 22.14 |
| 3 | 24.71 | 24.80 | 24.92 | 25.04 | 25.16 | 25.31 | 25.46 |
| 4 | 27.78 | 27.90 | 28.06 | 28.22 | 28.38 | 28.58 | 28.78 |
| 5 | 30.85 | 31.00 | 31.20 | 31.40 | 31.60 | 31.85 | 32.10 |
| 6 | 33.92 | 34.10 | 34.34 | 34.58 | 34.82 | 35.12 | 35.42 |
| 7 | 36.99 | 37.20 | 37.48 | 37.76 | 38.04 | 38.39 | 38.74 |
| 8 | 40.06 | 40.30 | 40.62 | 40.94 | 41.26 | 41.66 | 42.06 |
| 9 | 43.13 | 43.40 | 43.76 | 44.12 | 44.48 | 44.93 | 45.38 |
| 10 | 46.20 | 46.50 | 46.90 | 47.30 | 47.70 | 48.20 | 48.70 |
| 11 | 49.27 | 49.60 | 50.04 | 50.48 | 50.92 | 51.47 | 52.02 |
| 12 | 52.34 | 52.70 | 53.18 | 53.66 | 54.14 | 54.74 | 55.34 |
| 13 | 55.41 | 55.80 | 56.32 | 56.84 | 57.36 | 58.01 | 58.66 |
| 14 | 58.48 | 58.90 | 59.46 | 60.02 | 60.58 | 61.28 | 61.98 |
| 15 | 61.55 | 62.00 | 62.60 | 63.20 | 63.80 | 64.55 | 65.30 |
| 16 | 64.62 | 65.10 | 65.74 | 66.38 | 67.02 | 67.82 | 68.62 |
| 17 | 67.69 | 68.20 | 68.88 | 69.56 | 70.24 | 71.09 | 71.94 |
| 18 | 70.76 | 71.30 | 72.02 | 72.74 | 73.46 | 74.36 | 75.26 |
| 19 | 73.83 | 74.40 | 75.16 | 75.92 | 76.68 | 77.63 | 78.58 |
| 20 | 76.90 | 77.50 | 78.30 | 79.10 | 79.90 | 80.90 | 81.90 |
| 21 | 79.97 | 80.60 | 81.44 | 82.28 | 83.12 | 84.17 | 85.22 |
| 22 | 83.04 | 83.70 | 84.58 | 85.46 | 86.34 | 87.44 | 88.54 |
| 23 | 86.11 | 86.80 | 87.72 | 88.64 | 89.56 | 90.71 | 91.86 |
| 24 | 89.18 | 89.90 | 90.86 | 91.82 | 92.78 | 93.98 | 95.18 |
| 25 | 92.25 | 93.00 | 94.00 | 95.00 | 96.00 | 97.25 | 98.50 |
| 26 | 95.32 | 96.10 | 97.14 | 98.18 | 99.22 | 100.52 | 101.82 |
| 27 | 98.39 | 99.20 | 100.28 | 101.36 | 102.44 | 103.79 | 105.14 |
| 28 | 101.46 | 102.30 | 103.42 | 104.54 | 105.66 | 107.06 | 108.46 |
| 29 | 104.53 | 105.40 | 106.56 | 107.72 | 108.88 | 110.33 | 111.78 |
| 30 | 107.60 | 108.50 | 109.70 | 110.90 | 112.10 | 113.60 | 115.10 |
| 31 | 110.67 | 111.60 | 112.84 | 114.08 | 115.32 | 116.87 | 118.42 |
| 32 | 113.74 | 114.70 | 115.98 | 117.26 | 118.54 | 120.14 | 121.74 |
| 33 | 116.81 | 117.80 | 119.12 | 120.44 | 121.76 | 123.41 | 125.06 |

NOTES: 1/ Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

# NETHERLANDS AND UNITED KINGDOM

## INTERNATIONAL EXPRESS MAIL ON DEMAND SERVICE

| POUNDS (up to and including) | ZONE TO INTERNATIONAL EXCHANGE OFFICE | | | | | | |
|---|---|---|---|---|---|---|---|
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | $17.57 | $17.60 | $17.64 | $17.68 | $17.72 | $17.77 | $17.82 |
| 2 | 19.64 | 19.70 | 19.78 | 19.86 | 19.94 | 20.04 | 20.14 |
| 3 | 21.71 | 21.80 | 21.92 | 22.04 | 22.16 | 22.31 | 22.46 |
| 4 | 23.78 | 23.90 | 24.06 | 24.22 | 24.38 | 24.58 | 24.78 |
| 5 | 25.85 | 26.00 | 26.20 | 26.40 | 26.60 | 26.85 | 27.10 |
| 6 | 27.92 | 28.10 | 28.34 | 28.58 | 28.82 | 29.12 | 29.42 |
| 7 | 29.99 | 30.20 | 30.48 | 30.76 | 31.04 | 31.39 | 31.74 |
| 8 | 32.06 | 32.30 | 32.62 | 32.94 | 33.26 | 33.66 | 34.06 |
| 9 | 34.13 | 34.40 | 34.76 | 35.12 | 35.48 | 35.93 | 36.38 |
| 10 | 36.20 | 36.50 | 36.90 | 37.30 | 37.70 | 38.20 | 38.70 |
| 11 | 38.27 | 38.60 | 39.04 | 39.48 | 39.92 | 40.47 | 41.02 |
| 12 | 40.34 | 40.70 | 41.18 | 41.66 | 42.14 | 42.74 | 43.34 |
| 13 | 42.41 | 42.80 | 43.32 | 43.84 | 44.36 | 45.01 | 45.66 |
| 14 | 44.48 | 44.90 | 45.46 | 46.02 | 46.58 | 47.28 | 47.98 |
| 15 | 46.55 | 47.00 | 47.60 | 48.20 | 48.80 | 49.55 | 50.30 |
| 16 | 48.62 | 49.10 | 49.74 | 50.38 | 51.02 | 51.82 | 52.62 |
| 17 | 50.69 | 51.20 | 51.88 | 52.56 | 53.24 | 54.09 | 54.94 |
| 18 | 52.76 | 53.30 | 54.02 | 54.74 | 55.46 | 56.36 | 57.26 |
| 19 | 54.83 | 55.40 | 56.16 | 56.92 | 57.68 | 58.63 | 59.58 |
| 20 | 56.90 | 57.50 | 58.30 | 59.10 | 59.90 | 60.90 | 61.90 |
| 21 | 58.97 | 59.60 | 60.44 | 61.28 | 62.12 | 63.17 | 64.22 |
| 22 | 61.04 | 61.70 | 62.58 | 63.46 | 64.34 | 65.44 | 66.54 |
| 23 | 63.11 | 63.80 | 64.72 | 65.64 | 66.56 | 67.71 | 68.86 |
| 24 | 65.18 | 65.90 | 66.86 | 67.82 | 68.78 | 69.98 | 71.18 |
| 25 | 67.25 | 68.00 | 69.00 | 70.00 | 71.00 | 72.25 | 73.50 |
| 26 | 69.32 | 70.10 | 71.14 | 72.18 | 73.22 | 74.52 | 75.82 |
| 27 | 71.39 | 72.20 | 73.28 | 74.36 | 75.44 | 76.79 | 78.14 |
| 28 | 73.46 | 74.30 | 75.42 | 76.54 | 77.66 | 79.06 | 80.46 |
| 29 | 75.53 | 76.40 | 77.56 | 78.72 | 79.88 | 81.33 | 82.78 |
| 30 | 77.60 | 78.50 | 79.70 | 80.90 | 82.10 | 83.60 | 85.10 |
| 31 | 79.67 | 80.60 | 81.84 | 83.08 | 84.32 | 85.87 | 87.42 |
| 32 | 81.74 | 82.70 | 83.98 | 85.26 | 86.54 | 88.14 | 89.74 |
| 33 | 83.81 | 84.80 | 86.12 | 87.44 | 88.76 | 90.41 | 92.06 |

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

[FR Doc. 78-20384 Filed 7-21-78; 8:45 am]

[8010-01]

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-14956; File No. SR-BSE-78-5]

### BOSTON STOCK EXCHANGE, INC.

**Self-Regulatory Organization; Proposed Rule Change**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on June 19, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the terms of substance of the proposed rule change, chapter II, section 15 of the rules (amended by the addition of new subparagraphs to read as follows):

G.T.C. ORDERS—SEMIANNUAL CONFIRMATIONS

G.T.C. (good-til-canceled) orders expire at the end of the semiannual confirmation period (April and October) unless confirmed or renewed with the specialist on the last business day of such period. It shall be the specialist's responsibility to notify the introducing broker, in writing, of all G.T.C. orders held by him prior to the expiration of the semiannual confirmation period.

G.T.C. orders properly confirmed or renewed in the manner of their original entry, except as to partial execution or reduction in shares, are entitled to retain the same order of precedence on the specialist's book, and the specialist will be responsible for their proper entry. G.T.C. orders not so confirmed or renewed are automatically canceled, and if entered later must be entered by the specialist in the order of their receipt.

BSE's STATEMENT OF BASIS AND PURPOSE

PURPOSE OF THE PROPOSED RULE CHANGE

The purpose of the rule change is to incorporate into the rules the policy of semiannual confirmation of G.T.C. orders.

BASIS OF THE PROPOSED RULE CHANGE

The basis under the Act for the proposed rule change is section 6(b)(5). The proposed amendment is to insure the protection of the investors and the public interest.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

No comments were solicited or received.

BURDEN ON COMPETITION

No burden on competition is perceived by adoption of the proposed amendment.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before August 14, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
*Secretary.*

JULY 13, 1978.

[FR Doc. 78-20400 Filed 7-21-78; 8:45 am]

[8025-01]

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1470; Amendment No. 1]

### LOUISIANA

**Declaration of Disaster Loan Area**

The above-numbered declaration (see 43 FR 21962) is amended by extending the filing date for physical damage until the close of business on August 10, 1978, and for economic injury until the close of business on March 9, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 17, 1978.

A. VERNON WEAVER,
*Administrator.*

[FR Doc. 78-20397 Filed 7-21-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1497]

### WISCONSIN

**Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration, I find that the following counties and adjacent counties within the State of Wisconsin constitute a disaster area because of damage caused by severe storms, flooding, hail, and tornados beginning on or about June 25, 1978:

Buffalo, Crawford, Dane, Green, Iowa, Juneau, LaCrosse, Lafayette, Monroe, Pepin, Pierce, Richland, Rock, Sauk, Trempealeau, and Vernon.

Eligible persons, firms, and organizations may file applications for loans for physical damage caused by severe storms, flooding, hail, and tornados, until the close of business on September 7, 1978, and for economic injury until the close of business on April 6, 1979 at: Small Business Administration, District Office, 122 West Washington Avenue, Room 700, Madison, Wis. 53703, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 17, 1978.

A. VERNON WEAVER,
*Administrator.*

[FR Doc. 78-20398 Filed 7-21-78; 8:45 am]

[4710-02]

## DEPARTMENT OF STATE

**Agency for International Development**

[No. 115]

### ITALIAN DISASTER RELIEF

**Delegation of Authority**

Pursuant to the authority delegated to me by delegation of authority No. 104 from the Secretary of State, dated November 3, 1961 (26 FR 10608), as amended, I hereby delegate to the Assistant Administrator, Bureau for Program and Management Services authority, with power to redelegate to the coordinator of the Italian earthquake reconstruction program, to: (a) Sign and implement grants for disaster relief and rehabilitation activities concerning Italy, and (b) to sign and implement agreements with other U.S.

Government agencies for the provision of services in connection with such activities.

Delegation of authority No. 115, dated May 24, 1976, is hereby canceled. This delegation of authority shall be effective immediately.

Dated: July 7, 1978.

JOHN J. GILLIGAN,
*Administrator.*

[FR Doc. 78-20391 Filed 7-21-78; 8:45 am]

[4710-02]

[No. 115.1]

**COORDINATOR, ITALIAN EARTHQUAKE RECONSTRUCTION PROGRAM**

**Redelegation of Authority**

Pursuant to the authority delegated to me as Assistant Administrator, Bureau for Program and Management Services, under delegation of authority No. 115 from the Administrator, dated July 7, 1978, I hereby redelegate to the coordinator of the Italian earthquake reconstruction program the authority to sign and implement:

1. Grants for disaster relief and rehabilitation activities concerning Italy.
2. Agreements with other U.S. Government agencies for the provision of services in connection with such activities.

The authority delegated herein may not be further redelegated.

The redelegation of authority shall be effective immediately.

Dated: July 10, 1978.

D. G. MACDONALD,
*Assistant Administrator, Bureau for Program and Management Services.*

[FR Doc. 78-20392 Filed 7-21-78; 8:45 am]

[4710-02]

[No. 23.1]

**MISSION DIRECTOR, USAID/INDIA**

**Redelegation of Authority**

Pursuant to the authority delegated to me by AID delegation of authority No. 23, dated December 28, 1962 (23 FR 563), as amended, I hereby redelgate to the Mission Director, USAID/India, or any person acting in such capacity, authority to exercise any of the following functions with respect to loans (hereinafter referred to as "Cooley loans") heretofore made to entities in India by the Agency for International Development, the Export Import Bank of Washington, and the Overseas Private Investment Corporation pursuant to section 104(e) of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), as amended, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate and execute loan amendments with respect to Cooley loans, provided that the foregoing authority may not be exercised to approve amendments to such loan agreements which would increase the maximum total amount of the loan;
2. Authority to implement loan agreements with respect to Cooley loans, including the following:
(a) Authority to agree to any rescheduling or reorganization with respect to such loans; and
(b) Authority to negotiate, execute, and implement all agreements and other documents ancillary to such loan agreements.
3. The Mission Director, USAID-India shall obtain the concurrence of AID/Washington, prior to taking any action with respect to the following:
(a) Any compromise, novation or acceleration with respect to any loan;
(b) Initiation or settlement of legal proceedings under or with respect to any loan or any related transaction; and
(c) Any assignment, transfer or sale to any entity of any portion of the loan portfolio.
4. The authority herein redelegated and the limitations herein contained shall not apply to any litigation proceedings now in progress pursuant to prior delegations of authority from the Overseas Private Investment Corporation.
5. The authorities enumerated above may be redelegated by the individual listed above, as appropriate, but not successively redelegated except the authority described above in paragraph 1 with respect to the execution of loan amendments may not be redelegated.
6. The redelegation of authority dated November 19, 1976, from Michael H. B. Adler, Acting Assistant Administrator, Bureau for Asia to the AID Affairs Officer, India, is hereby rescinded.
7. This redelegation of authority is effective immediate.

Dated: July 3, 1978.

JOHN H. SULLIVAN,
*Assistant Administrator, Bureau for Asia.*

[FR Doc. 78-20393 Filed 7-21-78; 8:45 am]

[4910-13]

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA), SPECIAL COMMITTEE 137 ON AIRBORNE AREA NAVIGATION SYSTEMS (2D AND 3D)**

**Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 137 on Airborne Area Navigation Systems (2D & 3D) to be held August 15-17, 1978, Conference Room 7-A-B-C, DOT/Federal Aviation Administration Building, 800 Independence Avenue SW., Washington, D.C., commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of minutes of first meeting held June 7-8, 1978; (3) briefing on FAA study of lateral separation on VOR high altitude air routes; (4) discussion of route widths in relation to Committee terms of reference; (5) FAA report on requirements for area navigation avionics; (6) working group sessions; and (7) closing plenary session.

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 July 14, 1978.

KARL F. BIERACH,
*Designated Officer.*

[FR Doc. 78-20368 Filed 7-21-78; 8:45 am]

[4910-59]

**National Highway Traffic Safety Administration**

[Docket No. 78-11; Notice 1]

**MOTOR VEHICLE SAFETY, DAMAGEABILITY, AND FUEL ECONOMY STANDARDS**

**Analysis of Economic and Other Consequences**

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Request for public comment.

SUMMARY: With the increasing focus on the economic and other consequences of regulatory activities, as evidenced by the recent Executive Order on improving government regulations, the National Highway Traffic Safety Administration has prepared a draft study on the consequences of the motor vehicle regulations it has issued to date. Public comment on this document will aid the Agency in considering the consequences of future regulatory action.

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

ADDRESS: Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Admin-

istration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION, CONTACT:

Barry Felrice, Acting Associate Administrator, Plans and Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1560. A free copy of the draft study on the consequences of the Agency's motor vehicle standards can be obtained by calling or writing to Mr. Felrice.

SUPPLEMENTARY INFORMATION: Concern over the economic and other consequences of regulations has been highlighted in several recent actions by the President and Secretary of Transportation. The President's Executive Order 12044, Improving Government Regulation, requires that detailed regulatory analyses be prepared for each regulation that "will result in (a) an annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions * * *" These analyses must include discussion of the economic consequences of each alternative regulatory approach and an explanation of the reasons for selecting one of those alternatives. More recently, the Secretary of Transportation issued a proposed departmental order on policies and procedures for simplification, analysis and review of regulations. That order not only would incorporate the Executive order's requirements regarding regulatory analyses of certain regulations, but also would require that evaluations be made of the economic consequences of all regulations for which a regulatory analysis is not required.

In view of these actions and of allegations by motor vehicle industry officials that motor vehicle regulations impede growth, stifle technological innovation, and hamper the industry's ability to compete internationally, the Agency has prepared and is making available for public comment a draft study entitled "The Contributions of Automobile Regulation." The Agency believes it is one of the duties of a government agency to respond to allegations which it feels contain misinformation and convey an inaccurate impression of the effects of government programs and actions. Not to respond would by default give credence to such allegations and as a consequence undermine the credibility of government agencies. The study addresses the fundamental issues raised by these actions and criticisms, i.e., the need for regulation of motor vehicle safety, damageability, and fuel economy, how responsibly the regulatory function is carried out, the costs imposed on industry by the regulations and, especially, the overall effect of the Agency's rulemaking on the industry and the national economy.

The study draws these major conclusions:

The NHTSA's responsibility to improve safety is warranted by the annual loss of 47,000 lives and the millions of injuries in motor vehicle crashes. The economic loss to society because of these accidents is estimated at $43 billion. This points to the need, as Secretary of Transportation Brock Adams has termed it, for a more "socially responsible" automobile.

The Agency's estimate of the average price to consumers of safety features contained in a model year 1978 automobile is only about $250—approximately one-half the amount claimed by some auto makers. This figure includes manufacturer and dealer profit. As a frame of reference, the average new car purchaser spends 3 to 4 times this amount for comfort and convenience options such as air conditioners and vinyl roofs. Also, safety features constitute only about 5 percent of the total vehicle price. As a reflection of manufacturers' recognition of the need for safety improvements, industry responses to an Agency survey in 1976 indicate price reductions of only $80, on a sales weighted average, if all safety standards were revoked.

Both safety standards and fuel economy regulations create challenges to the industry's technological potential—challenges which can be met by the industry and which are amply justified by the health and economic benefits to the public and the National Policy to decrease reliance on foreign sources of oil.

The Agency does not agree with charges that its standards adversely affect competition. Instead, it promotes competition by requiring compliance with uniform performance, not design, standards and by issuing fuel economy standards which could make domestic manufactuers more competitive with smaller, more fuel efficient foreign cars. Also, by assuring that its regulations are reasonable, practicable, and appropriate, and by requiring compliance by all companies, foreign and domestic, which sell vehicles in the United States, the Agency's regulations do not adversely affect domestic manufactuers.

As a result of NHTSA's fuel economy standards, the Nation decreases its reliance on foreign sources of oil. This strengthens the U.S. economy—and a stronger economy will produce a better business atmosphere for the automobile industry. In addition, consumers will realize net savings of hundreds of dollars over the life of the vehicles subject to these standards, which also reduce the consequential costs of traffic crashes in the overall economy.

The Agency's safety regulations have been a major factor in the steadily declining fatality rate and its damageability and fuel economy standards will result in saving of hundreds of dollars over the life of the vehicles subject to these standards.

The increasing number of vehicle recalls due to safety defects illustrate the industry's failure to provide optimum safety on its own and demands a continuing federal role in motor vehicle safety. The fact that the number of recalled vehicles continues unabated indicates a certain lack of safety vigilance on the part of the industry, especally when one considers the very visible federal presence in investigating safety defects. Were it not for this federal presence, the number of vehicles repaired for safety defects would have been significantly less.

The price to the consumer for a 1984 passenger car, above that for a model year 1978 one, of major future safety, consumer and fuel economy rules is estimated at $285. Also, fuel economy regulations might add $60 to the price of light trucks and vans over the next 3 years. However, associated lifetime operating savings for these vehicles, primarily from savings in gasoline, are estimated at $750 and $620, respectively. Consumers should realize a net vehicle lifetime savings of about $500 for a model year 1984 vehicle compared to a model year 1978 vehicle. The savings are many times greater than the added price consumers may have to pay for a 1984 model vehicle over its 1978 counterpart.

In responding to assertions that its regulations are stifling innovation, the Agency believes that the large domestic auto firms have generally not been as innovative as the smaller foreign firms. By identifying areas where the automobile must be upgraded to improve safety or fuel efficiency, by making public the research from a number of diverse sources, and by its own research and development program, the NHTSA considers itself a primary agent for promoting, rather than retarding, technological progress. Federal activities in the areas of safety and fuel economy have stimulated technological innovation, rather than having the opposite impact, as claimed by some critics. For example, NHTSA has stimulated eight years of testing passive restraint systems by automobile manufacturers, passive restraint suppliers and research organizations as well as conducting its own research. This has produced a technology that will avoid an estimated 9,000 deaths and tens of thousands of severe injuries a year when all cars are equipped with passive restraints.

Other findings indicate:

Profitability and sales of the industry are largely a function of the state of the economy, rather than being driven by the effects of regulation.

The fuel economy standards set for model years 1981–84 require capital investments within the industry's capability. The industry's historical annual capital investments are nearly six times as large as the capital expenditures required to make fuel economy improvements.

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Issued on July 17, 1978.

JOAN CLAYBROOK,
*Administrator.*

[FR Doc. 78-20270 Filed 7-21-78; 8:45 am]

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[4810-22]

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 78-244]

### SOCCER SPORT SUPPLY CO., INC.

### Recordation of Trade Name

On July 7, 1978, there was published in the FEDERAL REGISTER (43 FR 29391) a notice of application for the recordation under section 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Soccer Sport Supply Co., Inc. The notice advised that prior to final action on the application, filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than August 23, 1978. No responses were received in opposition to the application.

The name "Soccer Sport Supply Company, Inc." is hereby recorded as the trade name of Soccer Sport Supply Co., Inc., a corporation organized under the laws of the State of New York, located at 1745 First Avenue, New York, N.Y. 10028, when applied to soccer equipment, soccer gloves, soccer balls, and soccer wearing apparel, manufactured in West Germany, Argentina, Pakistan, India, and various other countries. No foreign persons, entities, parent or subsidiary company are authorized to use the trade name.

Dated: July 18, 1978.

DONALD W. LEWIS,
*Deputy Assistant Commissioner, Regulations and Rulings.*

[FR Doc. 78-20484 Filed 7-21-78; 8:45 am]

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[4810-22]

### Office of the Secretary

### PERCHLORETHYLENE FROM BELGIUM

### Antidumping Proceeding Notice

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of perchlorethylene from Belgium are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. There appears to be substantial doubt that imports of the subject merchandise at less than fair value are the cause of present, or likely future, injury to an industry in the United States. Therefore, the case is being referred to the U.S. International Trade Commission for a preliminary injury determination.

EFFECTIVE DATE: July 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 16, 1978, a petition was received in proper form pursuant to sections 153.26 and 153.27, Customs regulations (19 CFR 153.26, 153.27), from counsel on behalf of PPG Industries, Inc., Pittsburgh, Pa.; Stauffer Chemical Co., Westport, Conn.; Diamond Shamrock Corp., Cleveland, Ohio; Vulcan Materials Co., Birmingham, Ala., and Dow Chemical U.S.A., Midland, Mich., alleging that perchlorethylene from Belgium is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as the "act").

For purposes of this notice, "perchlorethylene" means perchlorethylene, including technical grade perchlorethylene and purified grade perchlorethylene, provided for in item number 429.3400 of the tariff schedules of the United States.

The margin of dumping alleged, based on a comparison of sales to the United States with prices in the home market, is approximately 43 percent.

There is evidence on record concerning injury or likelihood of injury to the U.S. industry from the alleged less than fair value imports. However, sales data for the five petitioners show an overall decrease in 1977 when compared to 1975, but an increase over sales for 1976. More important is the fact that a single company among the petitioners accounts for almost all of the decrease. This company had been producing at a level high above the industry average in these 2 earlier years. Its return to average capacity utilization rates has greatly influenced the downward trend of the information presented to indicate injury.

Sales reports, filed with the petition, show that customers in the United States buy both imported and domestic perchlorethylene on a regular

basis. One report indicated that an extremely low price had been offered, but the price was based on high-volume sales and the furnishing of storage facilities by the purchasers. These factors could result in substantial savings to the seller. The petitioners' claim of regional injury is based solely on the fact that most imports enter the United States through ports of the Northeast. However, this fact does not indicate where the merchandise is actually sold. No direct evidence of lost sales has been provided.

Profitability figures present an uneven basis for comparison and analysis. Two companies present data for their entire chemical business, thus making it impossible to judge the impact of imports on perchlorethylene sales; the data from the other companies also raise doubts about their usefulness.

The production of perchlorethylene has been relatively stable for the last 3 years; the fact that these figures are less than the 1974 amount is not significant because that was an unusually good year for the industry. Perchlorethylene is made primarily with chlorine; the latter is produced in a chemical process that also yields caustic soda. Unusually strong demand for caustic soda in 1974 resulted in large amounts of chlorine and chlorine-based products becoming available.

On the basis of such evidence, it has been concluded that there is substantial doubt of injury or likelihood of injury to an industry in the United States by virtue of such imports from Belgium. Accordingly, the U.S. International Trade Commission in being advised of such doubt pursuant to section 201(c)(2) of the act (19 U.S.C. 160(c)(2)).

Having conducted a summary investigation as required by section 153.29 of the Customs regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value. Should the International Trade Commission, within 30 days of receipt of the information cited in the preceding paragraph, advise the Secretary that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of such merchandise into the United States, this investigation will be terminated. Otherwise, the investigation will continue to conclusion.

This notice is published pursuant to section 153.30 of the Customs regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
*Acting General Counsel*
*of the Treasury.*

[FR Doc. 78-20394 Filed 7-21-78; 8:45 am]

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[4810-22]

## PERCHLORETHYLENE FROM FRANCE

### Antidumping Proceeding Notice

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of perchlorethylene from France are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. There appears to be substantial doubt that imports of the subject merchandise at less than fair value are the cause of present, or likely future, injury to an industry in the United States. Therefore, the case is being referred to the U.S. International Trade Commission for a preliminary injury determination.

EFFECTIVE DATE: July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 16, 1978, a petition was received in proper form pursuant to sections 153.26 and 153.27, Customs regulations (19 CFR 153.26, 153.27), from counsel on behalf of PPG Industries, Inc., Pittsburgh, Pa.; Stauffer Chemical Co., Westport, Conn.; Diamond Shamrock Corp., Cleveland, Ohio; Vulcan Materials Co., Birmingham, Ala., and Dow Chemical U.S.A., Midland, Mich., alleging that perchlorethylene from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as the "Act").

For purposes of this notice, "perchlor- ethylene" means perchlorethylene, including technical grade perchlorethylene and purified grade perchlorethylene, provided for in item number 429.3400 of the tariff schedules of the United States.

The margin of dumping alleged, based on a comparison of sales to the United States with prices in the home market, is approximately 47 percent.

There is evidence on record concerning injury or likelihood of injury to the U.S. industry from the alleged less than fair value imports. However, sales data for the five petitioners show an overall decrease in 1977 when compared to 1975, but an increase over sales for 1976. More important is the fact that a single company among the petitioners accounts for almost all of the decrease. This company had been producing at a level high above the industry average in these 2 earlier years. Its return to average capacity utilization rates has greatly influenced the downward trend of the information presented to indicate injury.

Sales reports, filed with the petition, show that customers in the United States buy both imported and domestic perchlorethylene on a regular basis. One report indicated that an extremely low price had been offered, but the price was based on high volume sales and the furnishing of storage facilities by the purchasers. These factors could result in substantial savings to the seller. The petitioners' claim of regional injury is based solely on the fact that most imports enter the United states through ports of the Northeast. However, this fact does not indicate where the merchandise is actually sold. No direct evidence of lost sales has been provided.

Profitability figures present an uneven basis for comparison and analysis. Two companies present data for their entire chemical business, thus making it impossible to judge the impact of imports on perchlorethylene sales; the data from the other companies also raise doubts about their usefulness.

The production of perchlorethylene has been relatively stable for the last 3 years; the fact that these figures are less than the 1974 amount is not significant because that was an unusually good year for the industry. Perchlorethylene is made primarily with chlorine; the latter is produced in a chemical process that also yields caustic soda. Unusually strong demand for caustic soda in 1974 resulted in large amounts of chlorine and chlorine-based products becoming available.

On the basis of such evidence, it has been concluded that there is substantial doubt of injury or likelihood of injury to an industry in the United States by virtue of such imports from France. Accordingly, the U.S. International Trade Commission is being advised of such doubt pursuant to section 201(c)(2) of the act (19 U.S.C. 160(c)(2)).

Having conducted a summary investigation as required by section 153.29 of the Customs regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value. Should the International Trade Commission, within 30 days of receipt of the information cited in the preceding paragraph, advise the Secretary that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of such merchandise into the United States, this investigation will be terminated. Otherwise, the investigation will continue to conclusion.

This notice is published pursuant to section 153.30 of the Customs regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
*Acting General Counsel*
*of the Treasury.*

[FR Doc. 78-20395 Filed 7-21-78; 8:45 am]

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[4810-22]

## PERCHLORETHYLENE FROM ITALY

### Antidumping Proceeding Notice

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of perchlorethylene from Italy are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. There appears to be substantial doubt that imports of the subject merchandise at less than fair value are the cause of present, or likely future, injury to an industry in the United States. Therefore, the case is being referred to the U.S. International Trade Commission for a preliminary injury determination.

EFFECTIVE DATE: July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 16, 1978, a petition was received in proper form pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of PPG Industries, Inc., Pittsburgh, Pa., Stauffer Chemical Co., Westport, Conn., Diamond Shamrock Corp., Cleveland, Ohio, Vulcan Materials Co., Birmingham, Ala., and Dow Chemical U.S.A., Midland, Mich., alleging that perchlorethylene from Italy is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as the "Act").

For purposes of this notice, "perchlorethylene" means perchloethylene, including technical grade perchlorethylene and purified grade perchlorethylene, provided for in item number 429.3400 of the Tariff Schedules of the United States.

The margin of dumping alleged, based on a comparison of sales to the U.S. with prices in the home market, is approximately 39 percent.

There is evidence on record concerning injury or likelihood of injury to the U.S. industry from the alleged less than fair value imports. However, sales data for the five petitioners show an overall decrease in 1977 when compared to 1975, but an increase over sales for 1976. More important is the fact that a single company among the petitioners accounts for almost all of the decrease. This company had been producing at a level high above the industry average in these two earlier years. Its return to average capacity utilization rates has greatly influenced the downward trend of the information presented to indicate injury.

Sales reports, filed with the petition, show that customers in the United States buy both imported and domestic perchlorethylene on a regular basis. One report indicated that an extremely low price had been offered, but the price was based on high volume sales and the furnishing of storage facilities by the purchasers. These factors could result in substantial savings to the seller. The petitioners' claim of regional injury is based solely on the fact that most imports enter the United States through ports of the northeast. However, this fact does not indicate where the merchandise is actually sold. No direct evidence of lost sales has been provided.

Profitability figures present an uneven basis for comparison and analysis. Two companies present data for their entire chemical business, thus making it impossible to judge the impact of imports on perchlorethylene sales; the data from the other companies also raise doubts about their usefulness.

The production of perchlorethylene has been relatively stable for the last 3 years; the fact that these figures are less than the 1974 amount is not significant because that was an unusually good year for the industry. Perchlorethylene is made primarily with chlorine; the latter is produced in a chemical process that also yields caustic soda. Unusually strong demand for caustic soda in 1974 resulted in large amounts of chlorine and chlorine-based products becoming available.

On the basis of such evidence, it has been concluded that there is substantial doubt of injury or likelihood of injury to an industry in the United States by virtue of such imports from Italy. Accordingly, the U.S. International Trade Commission is being advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

Having conducted a summary investigation as required by section 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value. Should the International Trade Commission, within 30 days of receipt of the information cited in the preceding paragraph, advise the Secretary that there is no reasonable indication that an industry in the United States is being, or is likely to be, injured by reason of the importation of such merchandise into the United States, this investigation will be terminated. Otherwise, the investigation will continue to conclusion.

This notice is published pursuant to section 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
*Acting General Counsel*
*of the Treasury.*

[FR Doc. 78-20396 Filed 7-21-78; 8:45 am]

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[1505-01]

## INTERSTATE COMMERCE COMMISSION

[Notice No. 105]

### MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

*Correction*

In FR Doc. 78-18297 appearing at page 28606 in the issue for Friday, June 30, 1978, in the first column of page 28608, "No. MC 13828 (Sub-No. 257TA)" should have read "No. MC 113828 (Sub-No. 257TA)".

[1505-01]

[Notice No. 111]

**MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS**

*Correction*

In FR Doc. 78-18664 appearing at page 29233 in the issue for Thursday, July 6, 1978, in the first column of page 29237, "MC 14559 (Sub-15TA)" should have read "MC 142559 (Sub-15TA)".

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[7035-01]

[Docket No. AB-12 (Sub-No. 55)]

**SOUTHERN PACIFIC TRANSPORTATION CO. ABANDONMENT BETWEEN SAN BERNARDINO AND NORTHERN REDLANDS IN SAN BERNARDINO COUNTY, CALIF.**

**Findings**

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on January 20, 1978, and the decision of the Commission, Division 1, acting as an appellate division, served June 15, 1978, adopted the decision of the Commission, Review Board No. 5, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Southern Pacific Transportation Co. of its line of railroad extending from milepost 542.09 near San Bernardino in an easterly direction to the end of the branch at milepost 549.37 near North Redlands, a distance of 7.28 miles in San Bernardino County, Calif. A certificate of abandonment will be issued to the Southern Pacific Transportation Co. based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

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

[FR Doc. 78-20480 Filed 7-21-78; 8:45 am]

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[7035-01]

**PORT EQUALIZATION STUDY**

**Public Hearing**

The Interstate Commerce Commission's Rail Services Planning Office hereby announces two public hearings on its report on port equalization, entitled "Rail Rate Equalization To And From Ports." The hearing sites are:

1. Chicago, Ill.—August 8, 1978, Room 1318, Dirksen Building, 219 South Dearborn Street, time 9 a.m.
2. Washington, D.C.—August 15, 1978, Hearing Room F, ICC Building, 12th and Constitution Avenue time 9 a.m.

For information regarding the hearings and reservations for a time to testify contact:

Leo Fisher or Winifred Cabral, 202-254-3287
1900 L Street NW., Suite 500, Washington, D.C. 20036.

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

[FR Doc. 78-20481 Filed 7-21-78; 8:45 am]

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[7035-01]

[AB 167 (SDM)]

**CONSOLIDATED RAIL CORP.**

**Amended System Diagram Map**

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, part 1121.23, that the Consolidated Rail Corporation has filed with the Commission its amended color-coded system diagram map in docket No. AB 167 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on June 2, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designate agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the Office of the Commission, Section of Dockets, by requesting docket No. AB 167(SDM).

NANCY L. WILSON,
*Acting Secretary.*

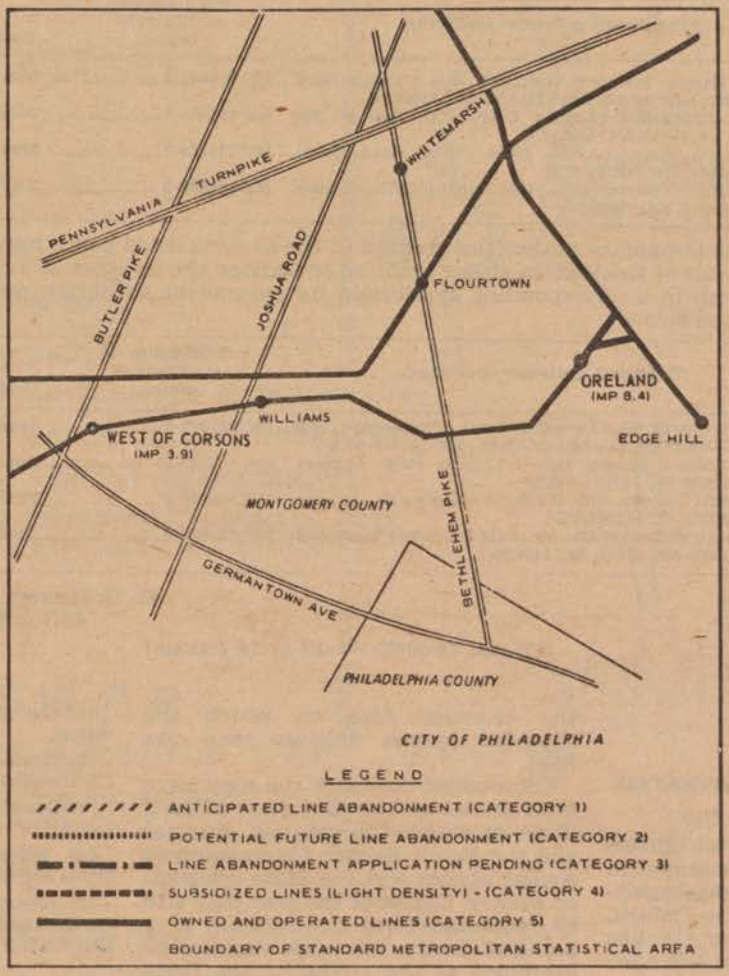
**NOTICE** Consolidated Rail Corporation (Conrail) hereby gives public notice that it is filing with the Interstate Commerce Commission (ICC) an amendment to the System Diagram Map which it filed December 1, 1977 pursuant to ICC regulations (49 CFR Sections 1121.20 to 1121.22). Specifically, the Plymouth Branch between Mile Post 3.9 (near Corsons, PA) and Mile Post 8.4 (at Oreland) in Montgomery County, PA with freight station at Williams and Oreland, has been reclassified from CATEGORY 2 to CATEGORY 5.

The Commission requires that a railroad company, when filing a System Diagram Map, place its rail lines in one of five categories. They are:

CATEGORY 1—rail lines or portions thereof which Conrail anticipates will be the subject of abandonment or discontinuance applications within the next three years; CATEGORY 2—rail lines or portions thereof which Conrail has under study *and* believes may be the subject of future abandonment applications; CATEGORY 3—rail lines that are now the subject of pending abandonment or discontinuance applications; CATEGORY 4—rail lines which are operated by Conrail under subsidy contracts with State agencies and/or shippers. (Conrail does not own these rail lines. They were excluded from the Conrail system when the bankrupt railroads of the Northeast/Midwest were re-structured.); CATEGORY 5—all Conrail lines not placed in Categories 1 through 4.

ICC regulations require that the System Diagram Map be accompanied by line descriptions, including, in the case of Categories 1, 2, and 3, the names of the states and counties in which each line is located.

Below you will find a revised map covering the Conrail lines *in this area* and showing the Categories in which these lines are now placed.




[FR Doc. 78-20474 Filed 7-21-78; 8:45 am]

[7035-01]

[Notice No. 12]

**TEMPORARY AUTHORITY TERMINATION**

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a certificate or permit in a corresponding application for permanent authority, on the date indicated below:

| Temporary authority application | Final action or certificate or permit | Date of action |
|---|---|---|
| Blue Ridge Transfer Co., Inc., Roanoke, Va. 24034, MC 63417-107TA. | MC 63417-111 | May 9, 1978. |
| Goddard's Transportation Inc., Box 185, Fair Haven, Vt. 05743, MC 106748-11TA. | MC 106748-12 | May 17, 1978. |
| Carl Subler Trucking, Inc., North West St., Versailles, Ohio 45380, MC 116763-366TA. | MC 116763-368 | May 26, 1978. |
| Hahn Truck Line, Inc., 5315 Northwest 5th St., P.O. Box 75218 Oklahoma City, Okla. 73107, MC 117765-231TA. | MC 117765-232 | Mar. 3, 1978. |
| Crete Carrier Corp., P.O. Box 81288, Lincoln, Nebr. 68501, MC 126118-42TA. | MC 126118-44 | Jan. 19, 1978. |

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a certificate or permit in a corresponding application for permanent authority, on the date indicated below:

| Temporary authority application | Final action or certificate or permit | Date of action |
|---|---|---|
| Gerard Harbec Transport, Inc., 200 Rue Comeau Nord, Farnham, Quebec, Canada J2N 2R6, MC 129962-1. | MC 129962-2 | Feb. 23, 1978. |
| Virginia Appalachian Lumber Corp., P.O. Box 48, Big Island, Va. 24526, MC 136511-4. | MC 136511-3 | June 28, 1978. |
| Brooks Transportation, Inc., 30650 Carter Road, Solon, Ohio 44139, MC 139254-8TA. | MC 139254-9 | May 19, 1978. |
| Western Sales Transportation, 1801 North 11th St., Omaha, Nebr., 68110, MC 139868-6. | MC 139868-5 | Sept. 28, 1977. |

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a certificate or permit in a corresponding application for permanent authority, on the date indicated below:

| Temporary authority application | Final action or certificate or permit | Date of action |
|---|---|---|
| George A. Sparks, d.b.a Escondido Truck & Equipment, 1020 Linda Vista Drive, San Marcos, Calif., MC 141362-6TA. | MC 141362-8 | June 30, 1978. |
| Bulk Transport Service, Inc., 1 Dundee Park, Andover, Mass. 01810, MC 141546-22TA. | MC 141546-23 | Apr. 17, 1978. |
| Fast Freight Systems, Inc., 118 North Congress St., Jackson, Miss. 39205, MC 142743-3TA. | MC 142743-2 | Feb. 23, 1978. |
| AAA Moving & Storage Co., Inc., 2414 University Boulevard, Tuscaloosa, Ala. 35401, MC 143424-1. | MC 143424-2 | June 5, 1978. |

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

[FR Doc. 78-20473 Filed 7-21-78; 8:45 am]

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[7035-01]

[AB 175 (SDM)]

**DULUTH, WINNEPEG & PACIFIC RAILWAY CO.**

**Amended System Diagram Map**

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, part 1121.23, that the Duluth, Winnepeg & Pacific Railway Co. has filed with the Commission its amended color-coded system diagram map in docket No. 175 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on July 5, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the Office of the Commission, Section of Dockets, by requesting docket No. AB 175 (SDM).

NANCY L. WILSON,
*Acting Secretary.*

SECTION 1121.21 DESCRIPTION OF LINE

SDM CATEGORY (1)

(a) *Carrier's designation:* (*) Rainy Subdivision.

(b) *State or States in which line is located:* (*) Minnesota.

(c) *County or counties in which the line is located:* (*) St. Louis.

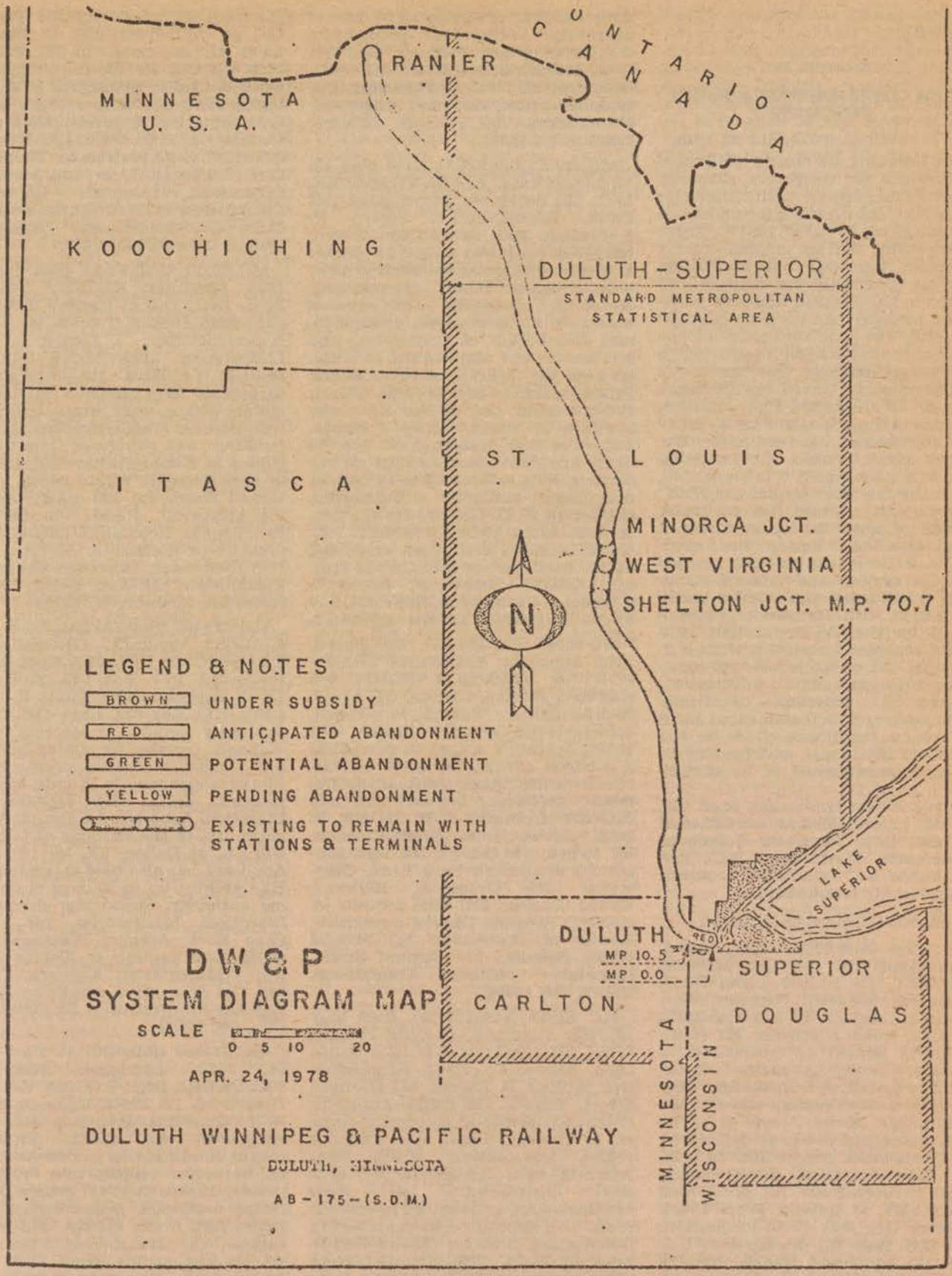
(d) *Mileposts delineating the line:* (*) From MP 00.0 to 10.5.

(e) *Agency or terminal stations located on the line with milepost designation:* (*) West Duluth MP 1.8.

NOTE.—This potential abandonment is predicated on successful negotiations to secure operating right on the Duluth, Missabe & Iron Range Railroad into Duluth, Minn.

AB-175-(SDM).

MAY 23, 1978.




[FR Doc. 78-20475 Filed 7-21-78; 8:45 am]

[7035-01]

[Notice No. 130]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 28, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

### MOTOR CARRIERS OF PROPERTY

MC 1395 (Sub-8TA), filed June 6, 1978. Applicant: ALVAN MOTOR FREIGHT, INC., 3600 Alvan Road, Kalamazoo, MI 49001. Representative: Martin J. Leavitt, P.O. Box 400, 22375 Haggarty Road, Northville, MI 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Evart, MI, and Grand Rapids, MI, as follows: From Evart, MI, over U.S. Hwy 10 to its junction with U.S. Hwy 131, thence over U.S. Hwy 131 to Grand Rapids, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Evart Products Co., 601 West Seventh Street, Evart, MI 49631. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 2052 (Sub-13TA), filed May 25, 1978. Applicant: BLAIR TRANSFER, INC., 203 South 9th Street, Blair, NE 68008. Representative: Steven K. Huhlamnn, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies* used in the manufacture, production, and distribution of crafts, art, and hobbies (except commodities in bulk), between the facilities of Artex Hobby Products, Inc., at or near Lima, OH, on the one hand, and, on the other, the facilities of Artex Hobby Products, Inc., at or near Lexington, SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R. D. Hickey, Traffic Consultant, Artex Hobby Products, Inc., 35300 Lakeland Blvd., East Lake, OH 44094. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 50069 (Sub-534TA), filed June 6, 1978. Applicant: REFINERS TRANSPORT & TERMINAL CORP., 445 Earlwood Avenue, Oregon, OH 43616. Representative: William P. Fromm, 445 Earlwood Avenue, Oregon, OH 43616. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cathodic electrocoat pigment feed and cathodic electrocoat resin* (in bulk, in tank vehicles), from Mount Clemens, MI, to points in GA, for 180 days. Supporting shipper(s): Ford Paint Operations, 400 Groesbeck Highway, Mount Clemens, MI. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, 313 Federal Office Building, 234 Summit Street, Interstate Commerce Commission, Toledo, OH 43604.

MC 53965 (Sub-138TA), filed May 19, 1978. Applicant: GRAVES TRUCK LINE, INC., P.O.Box 1387, 2130 South Ohio, Salina, KS 67401. Representative: William B. Barker, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Coffeyville Packing Co., at Coffeyville, KS, to East St. Louis, IL, and points in SD, TX, IA, MO, and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Coffeyville Packing Co., P.O. Box 334, Coffeyville, KS 67337. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 147 Federal Building and U.S. Courthouse, 444 Southeast Quincy, Topeka, KS 66683.

MC 63101 (Sub-9TA), filed June 6, 1978. Applicant: KEENE'S TRANSFER, INC., D.B.A. Keene's Transfer, 1019 East Avenue, Tomah, WI 54660. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefab fiberglass shelters, buildings, and structures*, from the facilities of Kenco Plastics Co., Inc., at or near Necedah, WI, to points in the United States, for 180 days. Supporting shipper(s): Kenco Plastics Co., Inc., Hwy 21, Necedah, WI 54646. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, WI 53703.

MC 111401 (Sub-523TA), filed June 6, 1978. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock, P.O. Box 632, Enid, OK 73701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds*, in bulk, in tank vehicles, from the facilities of Pfanstiehl Laboratories, Inc., at Waukegan, IL, to the facilities of Gifford-Hill Co., at Dallas, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pfanstiehl Laboratories, Inc., 1219 Glen Rock Avenue, Waukegan, IL 60085. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building 215 Northwest 3d, Oklahoma City, OK 73102.

MC 114569 (Sub-230TA), filed May 24, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins, P.O. Box 418, New Kingstown, PA 17072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen fruits, frozen vegetables, frozen berries, and frozen fish, frozen shrimp, and frozen turkeys*, when transported in the same vehicle and at the same time with frozen fruits, frozen vegetables, and

frozen berries, from points in CA, OR, and WA, to points in NY, NJ, CT, MA, RI, DE, and MD, and points in VA, east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal; and (2) *frozen french fried potatoes,* from points in ID to points in NY, NJ, CT, MA, RI, DE, MD, and points in VA east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately seven statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 114761 (Sub-15TA), filed April 25, 1978. Applicant: GETTER TRUCKING, INC., P.O. Box 1635, Billings, MT 59101. Representative: John R. Davidson, Room 805, Midland Bank Building, Billings, MT 59101. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of manufactured and natural gas and petroleum and their products and by-products, and machinery, materials, equipment, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and distmantling of pipe lines, including the stringing and picking up thereof, between points in the States of CO, ID, NE, UT, and WA, between points in the State of MT, ND, that part of SD west of the Missouri River and north of U.S. Hwy 14, and WY on the one hand, and on the other, points in CO, ID, NE, UT, and WA; (2) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in or in connection with: (a) The transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or well drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in CO, ID, MT, NE, ND, that part of SD west of the Missouri River and north of U.S. Hwy 14, UT, WA, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately nine statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 114917 (Sub-10TA), filed May 4, 1978. Applicant: DART TRANSPORTATION SERVICE, 1430 South Eastman Avenue, Box 23035, Los Angeles, CA 90023. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by wholesale or retail department, discount, or variety stores (except commodities in bulk), between Sparks, NV, on the one hand, and, on the other, points in CA, OR, and WA, under a continuing contract, or contracts, with K-Mart Corp., for 180 days. Supporting shipper: K-Mart Corp., 3100 West Big Beaver, Troy, MI 48084. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 115975 (Sub-29TA), filed May 12, 1978. Applicant: C.B.W. TRANSPORT SERVICE, INC., P.O. Box 48, Old Edwardsville and Hedge Road, South Roxana, IL., Wood River, IL 62985. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum grease* (in bulk, in tank vehicles), from the plantsite of Mobile Oil Corp., located at or near Beaumont, TX, to Clarksville, AR, under a continuing contract, or contracts, with Mobil Oil Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Richard Romero, Transportation Analyst, Mobil Oil Corp., 8350 North Central Expressway, suite 522, Dallas, TX 75206. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building., 527 East Capitol Avenue, Springfield, IL 62701.

MC 118142 (Sub-173TA), filed April 24, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Candy and confectioneries* in vehicles equipped with mechanical refrigeration (except in bulk), (1) From facilities of E. J. Brach & Sons Division, American Home Products Corp., Chicago & Sullivan, IL, to facilities of E. J. Brach & Sons, Reno, NV; (2) from facilities of E. J. Brach & Sons, Reno, NV, to points in AZ, CA, OR, and WA, restricted to shipments having prior movement from E. J. Brach & Sons facilities, Chicago and Sullivan, IL; and (3) from facilities of E. J. Brach & Sons, Chicago and Sullivan, IL, to points in KS, LA, MO, MS, OK and TX, for 180 days. Supporting shipper: E. J. Brach & Sons Division, American Home Products Corp., 4656 West Kinzie, Chicago, IL. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 121667 (Sub-6TA), filed May 16, 1978. Applicant: SMALLEY TRANSPORTATION CO., 2202 38th Street, P.O. Box 5175, Tampa, FL 33675. Representative: Ansley Watson, Jr., 512 North Florida Avenue, P.O. Box 1531, Tampa, FL 33601. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (1) Between Miami and Orlando, FL, serving all intermediate points: From Miami over U.S. Hwy 1 and/or FL Hwy A1A to Titusville, then over FL Hwy 405 to its junction with FL Hwy 50, then over FL Hwy 50 to Orlando, and return over the same route; (2) between Miami and Orlando, FL, serving all intermediate points: From Miami over U.S. Hwy 27 to South Bay, then over FL Hwy 80 to Belle Glade, then over U.S. 441 to Orlando, and return over the same route; (3) between South Bay and Orlando, FL, serving all intermediate points: From South Bay over U.S. Hwy 27 and 27A to Haines City, then over U.S. Hwy 17 to Orlando and return over the same route; (4) between Miami and Tampa, FL, serving all intermediate points:

From Miami over U.S. Hwy 41 to Punta Gorda, then over U.S. Hwy 17 to Bartow, then over U.S. Hwy 98 to Lakeland, then over U.S. Hwy 92 to Tampa, and return over the same route; (5) between Punta Gorda and Tampa, FL, over U.S. Hwy 41, serving all intermediate points; (6) between the junction of U.S. Hwy 41 and FL Hwy 29 near Everglades, FL, and Fort Myers, FL, serving all intermediate points: From junction of U.S. Hwy 41 with FL Hwy 29 over FL Hwy 29 to its junction with FL Hwy 82, then over FL Hwy 82 to Fort Myers, and return over the same route; (7) between Orlando and Tampa, FL, over Interstate 4, serving no intermediate points; (8) between Miami and the junction of the Sunshine State Parkway with U.S.

Hwy 17, over the Sunshine State Parkway, as an alternate route for operating convenience only; (9) between West Palm Beach and Arcadia, FL, serving all intermediate points:

From West Palm Beach over FL Hwy 710 to Okeechobee, then over FL Hwy 70 to Arcadia, and return over the same route; (10) between Miami and West Palm Beach, FL, over U.S. Hwy 441, serving all intermediate points; (11) between West Palm Beach and Fort Myers, FL, over FL Hwy 80, serving all intermediate points; (12) between Parrish and junction of FL Hwy 62 with U.S. Hwy 17, over FL Hwy 62, serving all intermediate points; (13) between South Venice and Murdock, FL, via Placida as an off-route point over FL Hwys 775, 776, and 771; (14) between Fort Myers and Fort Myers Beach, FL, over FL Hwys 865 and 867, serving Iona, Punta Rassa, and intermediate points; (15) between the junction of U.S. Hwy 41 and FL Hwy 78 (north of Fort Myers) and Bokeelia and St. James City, FL, over FL Hwys 78 and 767, serving Bokeelia, Pineland, and St. James as off-route points; (16) between Okeechobee and West Palm Beach, FL, via Canal Point, over U.S. Hwy 441, U.S. Hwy 98 and FL Hwy 80; (17) between Ashton, FL, on U.S. Hwy 192, and the intersection of FL Hwy 436 with U.S. Hwy 92 over FL Hwys 15, 15-A, and 436, via Narcoossee; (18) between Miami and Key West, FL, serving all intermediate points:

From Miami over U.S. Hwy 1 to Key West, and return over the same route; (19) between Miami and Homestead, FL, serving all intermediate points: From Miami over U.S. Hwy 41 to junction FL Hwy 27, then south over FL Hwy 27 to Homestead, and return over the same route; (20) All other points in FL on or south of a line beginning at the western terminus of FL Hwy 60, then easterly along FL Hwy 60 to its junction with I-4, then easterly along I-4 to its junction with FL Hwy 50, then easterly along FL Hwy 50 to its junction with FL Hwy 405, then northeasterly along FL Hwy 450 to its junction with FL Hwy 402, to its eastern terminus, will be served as off-route points. Transportation over all of the above routes, except No. 18, is restricted against the transportation of classes A and B explosives. Applicant also seeks authority to operate over the following routes for operating convenience only, and serving no points on said routes not otherwise authorized to be served:

(1) Between Orlando, FL, and the junction of Interstate 4 with Interstate 95, at or near Daytona Beach, FL, over Interstate 4; (2) FL Hwy 60 from its intersection with the eastern boundary of Polk County, FL, to its intersection with U.S. Hwy 1 at Vero Beach, FL; (3) between Fort Lauderdale and Naples, FL, over FL Hwy 84; (4) between Jacksonville and Miami, FL: From Jacksonville over Interstate 95 to its junction with FL Hwy 614, then over FL Hwy 614 to its junction with FL Hwy 713, then over FL Hwy 713 to its junction with the Sunshine State Parkway, then over the Sunshine State Parkway to Miami; (5) U.S. Hwy 98 between its intersection with U.S. Hwy 27 and Okeechobee, FL; (6) between Okeechobee and Fort Pierce, FL, over FL Hwy 70; (7) between Jacksonville and Orlando, FL, over U.S. Hwy 17; (8) between Bartow and Haines City, FL, over U.S. Hwy 17; (9) between Miami and West Palm Beach, FL, over Interstate 95. Applicant seeks authority to tack or join the routes sought herein with each other at common points, and to tack or join all of the authority sought herein with its present operating rights under Interstate Commerce Commission Certificate of Registration No. MC 121667 and Subs. Applicant seeks no authority herein duplicating that presently held under its certificates of registration referred to above. Applicant indicates it intends to tack existing authority under MC 121667. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately (24) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 126118 (Sub-77TA), filed May 2, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Breadmaking compound, dessert preparations, noi; animal and poultry feed, prepared, and agricultural commodities* exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with regulated commodities, from Appleton, WI, and its commercial zone to Elizabeth and Amboy, NJ; Yonkers, Brooklyn, and Buffalo, NY; Portland, OR; Woburn, MA; New Haven, CT; Baltimore, MD; King of Prussia, PA; Seattle, WA; Salt Lake City, UT; Denver, CO, and their commercial zones, and all points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Elmer Benes, Traffic and Distribution Manager, Foremost Food Co., division of Foremost-McKesson, Inc., Industrial Foods Division, 1 Post Street, San Francisco, CA 94104. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln NE 58508.

MC 126822 (Sub-46TA), filed May 10, 1978. Applicant: WESTPORT TRUCKING CO., 812 South Silver, P.O. Box 401, Paola, KS 66071. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins, and pelts* (except commodities in bulk), from Detroit, MI, to Fond du Lac, WI; St. Paul, MN; and North Adams, MA; Luray, VA; Durbin, WV; Gloversville, NY; Chicago, IL, and Milwaukee, WI, for 180 days. Applicant states it does not intend to tack or interline. Supporting shipper(s): WE Co., 3000 Standish Street, Detroit, MI 48216. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 147 Federal Building and U.S. Courthouse, 444 Southeast Quincy, Topeka, KS 66683.

MC 127816 (Sub-4TA), filed May 16, 1978. Applicant: BLUE STEM TRUCK LINE, INC., P.O. Box 296, 3220 West 6th Street, Emporia, KS 66801. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler Street, Suite 110L, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Portable aluminum can recycling machines*, between Hutchinson, KS, on the one hand, and points and places in the 48 contiguous United States, on the other hand, for 180 days. Applicant states it does not intend to tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arrow Machine, Inc., P.O. Box 1987, Hutchinson, KS 67501. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 147 Federal Building and U.S. Courthouse, 444 Southeast Quincy, Topeka, KS 66683.

MC 128627 (Sub-38TA), filed May 12, 1978. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Route 4, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregu-

lar routes, transporting: (1) *Agricultural grain storage and drying equipment, and accessories, and metal buildings,* from Grand Island, NE, to points in IA, IN, IL, MI, MO, and WI; and (2) *materials and supplies* used in the production and manufacture of commodities named in part (1) from Fort Dodge, IA; Rensselaer, IN; and Chicago, IL, to Grand Island, NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Chief Industries, Inc., P.O. Box 2078, Grand Island, NE 68801. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 129486 (Sub-10TA), filed May 15, 1978. Applicant: PAGE TRUCKING CO., INC., P.O. Box 14, Hines, MN 56647. Representative: Charles E. Johnson, 418 East Rosser Avenue, Bismarck, ND 58501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Pretzels, corn chips, popcorn, cheese curls, tortilla, chips, and similar snack food items,* from the facilities of Bachman Foods, Inc., at or near Terre Haute, IN, to Minneapolis and St. Paul, MN, and Fargo, ND, restricted to a transportation service to be performed under a continuing contract, or contracts, with Bachman Foods, Inc., Terre Haute, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bachman Foods, Inc., 2200 South 24th Street, Omaha, NE 68120. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 129974 (Sub-15TA), filed April 26, 1978. Applicant: THOMPSON BROS., INC., P.O. Box 457, Toronto, SD 57268. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by health food stores, and materials and supplies (except commodities in bulk, in tank vehicles), used in the manufacture, processing, sale, and distribution of such merchandise, (1) from Wautoma and Fredonia, WI; Perham, MN; Tampa, FL; and points in CA, to the plantsite and warehouse facilities of General Nutrition Centers, Inc., at Pittsburgh, PA; and (2) from the plantsite and warehouse facilities of General Nutrition Centers, Inc., at Pittsburgh, PA, to U.S. Postal Service Bulk Mail Centers at or near Dallas, TX; Hazelwood, MO; Kansas City, KS; Eagan, MN; Forest Park, IL; Memphis, TN; Commerce City, CO; and Atlanta, GA: (3) between the plantsite and warehouse facilities of General Nutrition Centers, Inc., at or near Dallas, TX; Atlanta, GA: Los Angeles, CA; Pittsburgh, PA; Fargo, ND, and Reno, NV. Restriction: Restricted in parts (1), (2), and (3) to traffic originating at or destined to the plantsite and warehouse facilities of General Nutrition Centers, Inc., under a continuing contract, or contracts, with General Nutrition Centers, Inc., for 180 days. Supporting shipper(s): General Nutrition Centers, Inc., 921 Penn Avenue, Pittsburgh, PA 15222 (Ric Trydahl, plant manager). Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 133233 (Sub-61TA), filed May 12, 1978. Applicant: CLARENCE L. WERNER, d.b.a. Werner Enterprises, P.O. Box 37308, I-80 and Hwy 50, Omaha, NE 68137. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and distribution of cast iron products and finshed products thereof (except commodities in bulk), between points in Pottawattamie County, IA, on the one hand, and, on the other, IL, KS, MN, MO, NE, ND, OK, SD, TX, and WI, restricted to a transportation service to be performed, under a continuing contract, or contracts, with Griffin Pipe Products Co., for 180 days. Supporting shipper(s): John A. Keenen, General Traffic Manager, Griffin Pipe Products Co., 2000 Spring Road, Oak Brook, IL 60521. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 136786 (Sub-138TA), filed May 12, 1978. Applicant: ROBCO TRANSPORTATION, INC., 4333 Park Avenue, Des Moines, IA 50321. Representative: Stanley C. Olsen, Jr., 7525 Mitchell Road, Eden Prairie, MN 55344. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Printed matter,* from Philadelphia, PA, to Phoenix, AZ; Los Angeles, San Francisco, CA; Denver, CO; Jacksonville, FL; Atlanta, GA; Metaire, LA; Minneapolis, MN; Kansas City, St. Louis, MO; Butte, MT; Charlotte, NC; Oklahoma City, OK; Portland, OR; Memphis, TN; Dallas, Houston, TX; Salt Lake City, UT; Seattle, WA; and Milwaukee, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Triangle Publications, Inc., 431 North 15th Street, Philadelphia, PA 19130. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 133937 (Sub-26TA), filed June 6, 1978. Applicant: CAROLINA CARTAGE CO., INC., 1486 Willingham Drive, East Point, GA 30320. Representative: Henry P. Willimon, P.O. Box 1075, Greenville, SC 29602. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department stores, and materials, supplies, and equipment, including garments on hangers, between Hudson County, NJ, and Atlanta, GA; Charlotte, NC; Memphis, TN; Miami, FL; Los Angeles, CA; Columbia, SC; Birmingham, AL; Chicago, IL; Gastonia, NC, and Greenville, SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately six statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 134323 (Sub-103TA), filed June 6, 1978. Applicant: JAY LINES, INC., 720 North Grand Street, Amarillo, TX 79107. Representative: Gailyn Larsen, 521 South 14th, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department stores, and equipment, materials, and supplies used in the conduct of such business (except in bulk), from Chicago, IL, to Denver, CO, under a continuing contract, or contracts, with J. C. Penney Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. C. Penney Co., Inc., 1301 Avenue of the Americas, New York, NY 10019. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206, Federal Building, Amarillo, TX 79101.

MC 135764 (Sub-3TA), filed June 6, 1978. Applicant: WINTER TRUCK LINES, INC., d.b.a. WINTER TRUCK LINE, Mahnomen, MN 56557. Repre-

sentative: Thomas J. Van Osdel, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Peoria, IL, to Mahnomen, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mahnomen Wholesale, Inc., P.O. Box 397, Mahnomen, MN 56557. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2d Avenue North, Fargo, ND 58102.

MC 136817 (Sub-8TA), filed June 6, 1978. Applicant: HUNTER BROKERAGE, INC., 805 32d Avenue, Council Bluffs, IA 51501. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Beardstown, IL, and points in its commercial zone to Lincoln, NE, under a continuing contract, or contracts, with McGuffin Lumber, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: McGuffin Lumber, Inc., James P. McGuffin, President, 3142 Central Street, Evanston, IL 60201. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 139078 (Sub-10TA), filed June 6, 1978. Applicant: MIDCOAST TRUCKING, 131 Beaver Brook Road, Lincoln Park, NJ 07035. Representative: Alan Kahn, 1920 Two Penn Plaza, Philadelphia, PA. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets* (except in bulk), from Houston, TX, to Melrose Park, IL, and Baltimore, MD. Restriction: The authority granted herein is limited to a transportation service to be performed under a continuing contract, or contracts, with Soltex-Polymer, Inc., for 180 days. Supporting shipper: Soltex-Polymer, Inc., P.O. Box 27328, Houston, TX 77027. Send protests to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

By the Commission.

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

[FR Doc. 78-20476 Filed 7-21-78; 8:45 am]

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[7035-01]

[Notice No. 129]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

July 27, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interestate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

### Motor Carriers of Property

MC 41406 (Sub-82TA), filed June 7, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, P.O. Box 2176, Hammond, IN 46323. Representative: E. Stephen Heisley, 666 11th Street NW., No. 805, Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain storage and grain drying bins, grain dryers and parts thereof*, from the facilities of Chicago Eastern Corp., at or near Marengo, IL to points in AL, AR, FL, GA, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NC, ND, OH, OK, SC, SD, TN, TX and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James A. Biskus, Traffic Manager, Chicago, Eastern Corp., 200 North Prospect Street, Marengo, IL 60152. Send protests to: TA Lois M. Stahl, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 133805 Sub-8TA, filed June 7, 1978. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Star Road, Fort Worth, TX 76112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Textiles and textile piece goods* from Graniteville, Orangeburg, Blackburg, and Lyman, SC; Trion, Swainsboro, and Chickaguma, GA; Fall River and Lawrence, MA; East Rutherford, NJ; Rockville and Putnan, CT; Concord, NC; Kenyon and Warwick, RI; and Elizabethton, TN to Cleburne and Sweetwater, TX, for 180 days. Supporting shipper: Walls Industries, Inc., 1905 North Main Street, Cleburne, TX 76031. Send protests to: Robert J. Kirspel, District Supervisor, Room. 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 136635 Sub-8TA, filed May 31, 1978. Applicant: UNIVERSAL CARTAGE, INC., 640 West Ireland Road, South Bend, IN 46614. Representative: Donald W. Smith, P.O. Box 40659 (Suite 945), 9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refrigeration equipment*, from the facilities of Tyler Refrigeration Corp. at Niles, MI, to points in the United States in and east of ND, SD, NE, KS, OK, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tyler Refrigeration Corp., 1329 Lake Street, Niles, MI 49120. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 353 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 139193 Sub-84TA, filed June 7, 1978. Applicant: ROBERTS & OAKE, INC., 527 East 52d Street North, Sioux Falls, SD 57101. Representative: Terrence D. Jones, 2033 K Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise* as dealt in by discount and variety stores (except foodstuffs, furniture, and commodities in bulk), and (2) *foodstuffs* (except in bulk) and furniture, in mixed loads with the commodities in (1) above, from points in NY, NJ, CT, PA, MA, ME, NH, VT, and RI, to points in KS, MO, IN, MI, OH, IL, TX, MN, WI, NE, and IA, re-

stricted to the transportation of traffic originating at or destined to the facilities of K Mart Corp., and restricted to a transportation service performed under a continuing contract or contracts with K Mart Corp., for 180 days. Supporting shipper: K Mart Corp., 3100 West Big Beaver Road, Troy, MI 48084, C. F. Rowe, J. L. Hammond, District Supervisors, Interstate Commerce Commission, Bureau of Operations, Room. 455, Federal Building, Pierre, SD 57501.

MC 139577 (Sub-21TA), filed May 12, 1978. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, 204 East Winnebago Street, Friesland, WI 53935. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal containers and covers*, (a) From St. Joseph, MO, to West Point and Moorhead, MS; LaPorte, IN; Sebring and Mt. Vernon, OH; Jackson, TN; Mansfield, TX; Jefferson, Waupun, Oconomowoc, and Menomonee Falls, WI; and (b) from Mansfield, TX, to St. Joseph, Trenton, and Mt. Vernon, MO, and (c) from Waupun, Oconomowoc, and Menomonee Falls, WI, to St. Joseph, Trenton and Mt. Vernon, MO; Jacksonville, IL; and Sebring, OH; (d) from Mt. Vernon, MO, to Jefferson, Waupun, Oconomowoc and Menomonee Falls, WI; Sebring, OH; Mansfield, TX; and (2) *Materials, supplies and equipment* utilized in the manufacturing of metal containers and covers (except commodities in bulk, in tank vehicles), from St. Joseph, MO, to Mansfield, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Carnation Co., 39526 Marks Road, P.O. Box, Oconomowoc, WI 53066. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, WI 53703.

MC 139584 (Sub-16TA), filed June 1, 1978. Applicant: JOHN BUSCH, Box 211, Conyngham, PA 18219. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic sheeting, ground plastic, plastic pellets and granules* (except commodities in bulk, in tank or hopper type vehicles), between Hazleton, PA, on the one hand, and, on the other, points in the United States (except New York City and Long Island, NY; Lindenwold, Little Falls, North Bergen, Englewood, Paterson, Windsor, Elizabeth, Fairfield, Keasby, Alpha, Carlstadt, Avenel, Bloomfield, and Linden, NJ; Natick, Peabody, Stoughton, Ludlow, Dracut, and Holyoke, MA; Cumberland, RI; Detroit, MI; Mt. Airy, NC; Greeley, CO; Fair Forest, SC; Torrance and Santa Clara, CA; Houston, TX; Chicago, Des Plaines, Schiller Park, and Hamilton, IL; Federalsburg, MD; Sarasota, Jacksonville and Miami, FL; Memphis and Shelbyville, TN; Stamford and Milford, CT; St. Paul and Minneapolis, MN; Hutchison, Lindstorm, Mankato, Fairibault, and Lakeside, MN; Macon, GA; Jamesville, Ripon, and Milwaukee, WI; Florence, KY; and Cincinnati and Cleveland, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kama Corp., 666 Dietrich Avenue, Hazleton, PA 18201. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 140179 (Sub-5TA), filed May 16, 1978. Applicant: N. R. G. HAULING, INC., P.O. Box 456, Madisonville, KY 42431. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap or waste aluminum, aluminum dross*, between the facilities of Barmet of IN, at or near Rockport, IN, on the one hand, and, on the other, the facilities of Barmet of Ky, at or near Livia, KY, for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mr. John Grunigen, Plant Manager, Barmet of KY, Inc., P.O. Box 98, Utica, KY 42396. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, KY 40202.

MC 140846 (Sub-8TA), filed May 18, 1978. Applicant: CENTRAL DELIVERY SERVICE OF MASSACHUSETTS, INC., 125 Magazine Street, Boston, MA 02119. Representative: Jeremy Kahn, Kahn & Kahn, 733 Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Advertising matter, consisting of camera-ready paste-ups and layouts*, (1) From the facilities of First National Stores, Inc., at or near Windsor Locks, CT, to Derry and Nashua, NH, Newport, Pawtucket, and Providence, RI, and Acton, Amherst, Arlington, Athol, Attleboro, Beverly, Boston, Brockton, Dedham, East Boston, Fall River, Falmouth, Framingham, Gardner, Gloucester, Hyannis, Lexington, Lynn, Lynnfield Center, Melrose, New Bedford, Newburyport, Norwood, Peabody, Plymouth, Quincy, Reading, Revere, Salem, Saugus, Springfield, Sudbury, Wakefield, Woburn, and Worcester, MA; and (2) From the office of First National Stores, Inc., Boston, MA., to the facilities of First National Stores, Inc., at or near Windsor Locks, CT. Restrictions: The services authorized herein are subject to the following conditions: (1) No service shall be rendered in the transportation of any package or article weighing more than 10 pounds or each package or article shall be considered as a separate and distinct shipment. (2) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 30 pounds from one consignor at one location to one consignee at one location on any one day. (3) Service provided in the transportation of packages or articles herein shall be accomplished with 24 hours of the time at which the package or article is tendered for transportation. (4) Transportation authorized herein shall be performed under a continuing contract, or contracts, with First National Stores, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: First National Stores, Inc., Somerville, MA 02143. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 142059 (Sub-40TA), filed May 17, 1978. Applicant: CARDINAL TRANSPORT, INC. (a Delaware corporation), 1830 Mound Road, P.O. Box 911, Joliet, IL 60436. Representative: Jack R. Ley, 1830 Mound Road, Joliet, IL 60436. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum slabs, billets and ingots*, (a) from the facilities of Howmet Aluminum Corp., at or near Frederick, MD, to Decatur and Scottsboro, AL; Hot Springs, AR; Miami and Sanfor, FL; Gainesville, Jonesboro, Newman and Rome, GA; Evansville, IN; Hawesville, and Shelbyville, KY; Bossier City, LA; Hernando and Magnolia, MS; Carthage, Elizabethton and Nashville, TN; and Bryan, TX; and the facilities of Howmet Aluminum Corp. at or near Magnolia, AR, and Rockwall, TX; (b) facilities of Howmet Aluminum Corp. at or near Magnolia, AR, and Rockwall, TX, to New Madrid, MO, Murraysville, PA, and the facilities of Howmet Aluminum Corp. at or near Lancaster, PA; (c) from Scottsboro, AL, to the facilities of Howmet Aluminum Corp. at or near Lancaster, PA; and (d) from the facilities of Howmet Aluminum Corp. at or near Magnolia, AR, to Rome, GA, and Kansas City, MO, for 180 days. Supporting shipper: Keven Connaughton, Traffic Coordinator, Howmet Aluminum

Corp., 475 Steamboat Road, Greenwich, CT 06830. Send protests to: Lois M. Stahl, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 219 South Dearborn Street, room 1386, Chicago, IL 60604.

MC 142288 (Sub-4TA), filed June 6, 1978. Applicant: HAMILTON TRUCKING CO. OF OKLAHOMA, INC., 12612 East Admiral Place, Tulsa, OK 74116. Representative: J. David Geiger, 12612 East Admiral Place, Tulsa, OK 74116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, granulated and/or prilled, in bulk and in bags, from the Port of Catoosa, OK, to points in AR, CO, KS, MO, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Willbros Terminal Co., 6202 West Channel Road, Catoosa, OK 74015. Send protests to: Connie Stanley, Transportation Assistant, room 240, Old Post Office and Courthouse Building, 215 Nortwest 3d, Oklahoma City, OK 73102.

MC 143264 (Sub-5TA), filed June 6, 1978. Applicant: DAIRY LEASING SERVICE, INC., 803 Herring Avenue, Wilson, NC 27893. Representative: Thomas N. Willess, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream and ice cream novelties*, from Marietta, GA, to Jacksonville, Miami, Orlando, and Tampa, FL, under a continuing contract, or contracts, with Kraft, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kraft, Inc., 2221 Paterson Avenue, Winston-Salem, NC 27105. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 143529 (Sub-2TA), filed May 12, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main Street, Harrisonburg, VA 22801. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW, Washington, DC 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen italian ice*, from Gaithersburg, MD, to points in NJ, CT, RI, VT, NH, ME, Atlanta, GA; Milford, DE; Chicago, IL; Louisville, KY; Milwaukee, WI; St. Louis, MO; Grand Rapids, MI; Boston, MA; Landover, MD; Ft. Wayne, Indianapolis, and Evansville, IN; Syracuse, Albany, Buffalo, Rochester, and the New York City Commercial Zone, NY, Dayton, Cincinnati, Columbus, Toledo and Cleveland, OH; Detroit, MI; Harrisburg, Johnstown, Reading, Pittsburgh, York, Philadelphia, Scranton, and Wilkes-Barre, PA, under a continuing contract, or contracts, with United Products Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Products Co., Sarasota, FL 33581. Send protests to: Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 24011.

MC 144222 (Sub-3TA), filed June 6, 1978. Applicant: RONALD HACKENBERGER, D.B.A. RON'S TRUCKING SERVICE, Route 250, North, RFD No. 3, Norwalk, OH 44857. Representative: E. H. van Deusen, Sanborn, Brandon & DuVall, P.O. Box 97, 220 West Bridge Street, Dublin, OH 43017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granulated slag*, (in bulk, in dump vehicles), from the plantsite of H. G. Reed & Co., Inc., at or near Cresap, WV to the plantsite of CertainTeed Corp., at or near Avery, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: CertainTeed Corp., P.O. Box 860, Valley Forge, PA 19482. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 144386 (Sub-1TA), filed May 16, 1978. Applicant: WILLIAM B. BLANEY, JOHN D. BLANEY, JR., AND JAMES M. BLANEY, D.B.A. BLANEY FARMS, a partnership, R.D. No. 1, Box 218B, Perryopolis, PA 15473. Representative: Robert D. Kalinosk, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beer*, in bottles and cans, from the facilities of Stroh Brewing Co., Inc., Detroit, MI, from the facilities of C. Schmidt & Sons, Inc., Cleveland, OH, and from the facilities of Frankenmuth Bavarian Beer Co., Frankenmuth, MI, to the facilities of R. A. Mateucci Beer Distributors, Inc., Rice's Landing, PA, for 180 days. Supporting shipper: R. A. Mateucci, Beer Distributors, Inc., Box 37, Rice's Landing, PA 15357. Send protests to: J. A. Niggemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

MC 144700 (Sub-1TA), filed May 31, 1978. Applicant: CONTINENTAL CARRIERS, INC., P.O. Box 6238, Pompano Beach, IL 33050. Representative: Stuart R. Mandel, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rubber tire treads, tread stocks, tire patches, tire tubes, solvents, adhesive cements, glues or paste, and cured rubber*, except in bulk, in vehicles equipped with mechanical refrigeration units, and (2) *materials and supplies* used in the manufacture and distribution of those items in (1), except in bulk, in vehicles equipped with mechanical refrigeration units, (1) Between Muscatine, IA, on the one hand, and, on the other, St. Louis, MO and Oxford, NC; (2) Between Muscatine, IA, on the one hand, and, on the other, St. Louis and Kansas City, MO, Wichita, KS, Memphis, TN, Little Rock, AR, New Orleans, LA, and Ft. Worth, Dallas and Abilene, TX; (3) Between Muscatine, IA on the one hand, and, on the other, Kansas City, MO, Wichita, KS, Scottsbluff, NE, Longmont, Denver and Commerce City, CO, Salt Lake City, UT, Santa Fe, NM, Phoenix, AZ, and Sacramento, Oakland, Fresno and Chino, CA; (4) Between Muscatine, IA, to Memphis, TN, Birmingham, AL and Griffin, GA; (5) Between Oxford, NC, on the one hand, and, on the other, Little Rock, AR, New Orleans, LA, Memphis, TN, Birmingham, AL and Ft. Worth, Dallas and Abilene, TX; (6) Between Oxford, NC, on the one hand, and, on the other, Birmingham, AL, Memphis, TN, Little Rock, AR, Kansas City and St. Louis, MO, Wichita, KS, Longmont, Denver and Commerce City, CO, Salt Lake City, UT, Santa Fe, NM, Phoenix, AZ and Chino, CA; (7) Between Abilene, TX, on the one hand, and, on the other, Santa Fe, NM, Phoenix, AZ, and Chino, CA; (8) From Abilene, TX, to Ft. Worth and Dallas, TX, New Orleans, LA, Memphis, TN, Birmingham, AL and Griffin, GA; and (9) From Muscatine, IA, Oxford, NC and Abilene, TX to Long Beach, Los Angeles, Oakland, and San Francisco, CA, under a continuing contract or contracts with Bandag, Inc., for 180 days. Supporting shipper(s): Bandag, Inc., Bandag Center, Muscatine, IA 52761. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 144703TA, filed April 28, 1978. Applicant: MICHAEL PETERSEN TRUCKING, INC., 1452 Santa Monica Boulevard, Santa Monica, CA. Representatives: Kellner & Stefflre, Greg P. Stefflre, 700 South Flower Street, Suite 1724, Los Angeles, CA 90017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bagels*,

*bagelettes, bagel chips, bagel specialty products, bagel promotional materials and the materials and supplies* used in the manufacture and sale thereof, for the account of Lender's Bagel Bakery, Inc., (a) from the plantsites and facilities of Lender's Bagel Bakery and its sister corporation Abel's Bagels located at or near New Haven and West Haven, CT, and Buffalo, NY, to points in PA, NJ, MD, OH, MI, IL, WI, MN, MO, TX, CO, UT, AZ, CA, OR and WA; and (b) between the facilities of Lender's Bagel Bakery, Inc., located at or near New Haven and West Haven, CT, and Buffalo, NY, under a continuing contract, or contracts, with Lender's Bagel Bakery, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lender's Bagel Bakery, Inc., Post Road, West Haven, CT. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144740 (Sub-1TA), filed May 12, 1978. Applicant: L. G. DeWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Jacob P. Billig, 2033 K Street NW, Washington, DC 20006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Candy, confectionery, and snack foods* (except in bulk), and display items and promotional material, in vehicles equipped with mechanical refrigeration, from the facilities of or utilized by Whitman's Chocolates Division, Pet, Inc., at Philadelphia, PA, to Dallas, Houston, and Garland, TX; Denver, CO; and Los Angeles, San Francisco, south San Francisco, San Leandro, Anaheim, La Mirada, and Terminal Island, CA, restricted to a transportation service performed under a continuing contract, or contracts, with Whitman's Chocolates, Division, Pet, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whitman's Chocolates Division Pet, Inc., 9701 Roosevelt Boulevard, Philadelphia, PA 19114. Send protests to: Terrecia L. Standridge, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW, Room 300, Atlanta, GA 30309.

MC 144760 (Sub-1TA), filed May 19, 1978. Applicant: HITTMAN TRANSPORT SERVICES, INC., 2700 Keslinger Road, Geneva, IL 60134. Representative: Anthony C. Vance, 1307 Dolley Madison Boulevard, McLean, VA 22101. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (A) *Radioactive waste, moving in self-powered, shipper-owned containers permanently mounted on shipper-owned trailers,* from (1) Zion Nuclear Plant, Zion, IL; (2) Dresden Nuclear Station, Morris, IL; (3) Quad Cities Nuclear Station, Cordova, IL; (4) Duane-Arnold Energy Center, Palo, IA; and (5) Donald C. Cook Nuclear Station, Bridgman, MI, to Barnwell, SC, restricted to transportation service performed under a continuing contract, or contracts, with Hittman Nuclear & Development Corp.; and (B) *Empty radioactive shipping containers,* from Barnwell, SC, to the origin points specified immediately above in A, restricted to transportation service performed under a continuing contract, or contracts, with Hittman Nuclear & Development Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilson C. McArthur, Vice President and General Manager, Hittman Nuclear & Development Corp., 9190 Red Branch Road, Columbia, MD 21045. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Chicago, IL 60604.

MC 144817TA, filed May 24, 1978. Applicant: JOHNNY ETEROVICH, d.b.a. JOHNNY'S TRUCKING, 12811 Roswell, Chino, CA 91710. Representative: Milton W. Flack, 4311 Wilshire boulevard, Suite 300, Los Angeles, CA 90010. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Steel products, viz: shelving, cabinets, furniture and parts thereof;* (2) *lift trucks;* (3) *paint, stain or varnish* utilized in the manufacture, sale, and distribution of commodities in (1) above, from the facilities of Hallowell Division Standard Pressed Steel Co., located at Hatfield, PA, to Points in AZ, AR, CA, CO, FL, ID, MT, NV, NM, OK, OR, TX, UT and WA, under a continuing contract, or contracts, with Standard Pressed Steel Co., for 180 days. Supporting shipper: Standard Pressed Steel Co., Hallowell Division, Township Line Road, Hatfield, PA 19440. Send protests to: Irene Carlos, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144848 (Sub-1TA), filed June 6, 1978. Applicant: I & L TRUCKING, INC., Star Route, Utaca, OH 43080. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass bottles and containers and materials, equipment, and supplies* used in the manufacture, sale, or distribution of glass bottles and containers (except commodities in bulk), (1) between the facilities of Chattanooga Glass Co., in Columbus and Mount Vernon, OH, and Baltimore, MD; and (2) between the origins in (1) above, on the one hand, and, on the other, points in GA, IL, IN, IA, KY, MD, MI, MN, MO, NY, NC, OH, PA, SC, TN, VA, WV, WI, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chattanooga Glass Co., 400 West 45th Street, Chattanooga, TN 37410. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 144867TA, filed June 7, 1978. Applicant: R & J TRANSPORT, INC., 1612 Iris Drive, Manitowoc, WI 54220. Representative: Michael J. Wyngaard, 150 E. Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Papermaking machinery and equipment, parts and accessories thereto and dunnage,* between Neehah, EI, on the one hand, and, on the other, points in IL, KY, MI, MN, and OH, restricted against the transportation of commodities in bulk, in tank vehicles, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: J. W. Hewitt Co., 131 North Commercial Street, Neenah, WI 54956, and Stowe-Woodward Co., 912 Haase Street, Neenah, WI 54956. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 144869TA, filed June 6, 1978. Applicant: ICE TRANSPORT, INC., P.O. Box 9930, Little Rock, AR 72209. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Ice,* from Dallas, TX, to points in AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Arktic Ice, Inc., 1800 East Ninth Street, Little Rock, AR 72202. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144872TA, June 7, 1978. Applicant: RICE TRUCK LINES, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. Authority sought to operate as a *contract*

*carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such commodities as are manufactured or distributed by steel mills or metal fabricators;* (2) *such commodities as are used or dealt in by retail or wholesale hardware stores;* (3) *scrap metals;* and (4) *hides and pelts,* as follows: (a) Between the facilities of Pacific Hide & Fur Depot at or near Billings, Bozeman, Butte, Glasgow, Great Falls, Havre, Helena, Kalispell, Miles City, Missoula, Lewistown, and Sidney, MT; Kennewick, Spokane, and Tacoma, WA; Mills, Riverton, Worland, and Gillette, WY; Salmon, Nampa, Sandpoint, Lewiston, and Twin Falls, ID; and Portland, OR; and (b) between the points named in (a) above, on the one hand and, on the other, Wilton, IA; Denver, Loveland, and Pueblo, CO; Omaha and Norfolk, NE; Minneapolis and St. Paul, MN;: Whitehall, MI; Cambridge City and Gary, IN: St. Louis, MO; Laredo, TX; and points in CA, IL, MT, OR, UT, WA, and WY. Restriction: Restricted to traffic moving under continuing contract or contracts with Pacific Hide & Fur Depot, for 180 days. Supporting shipper: Pacific Hide & Fur Depot, 1401 13th Street NW., Great Falls, MT 59404. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

PASSENGER CARRIERS

MC 143851 (Sub-1TA), filed May 23, 1978. Applicant: AIRPORTS PASSENGER SYSTEM, INC., 11 Harwood Road, Marlton, NJ 08053. Representative: Leonard G. Zucker, 321 Brookline Avenue, Cherry Hill, NJ 09002. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage,* having a prior or subsequent movement by air, or persons involved in the airline industry, in special operations, limited to transportation of not more than 16 passengers in any one vehicle, not including the driver thereof, between the airports of Newark, NJ; New York, NY; Philadelphia, PA; Pomona, NJ; Bader Field, NJ, on the one hand, and, on the other, Atlantic and Cape May Counties, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 144862TA, filed June 6, 1978. Applicant: CELEBRITY & VIP LIMOUSINE SERVICE (Division of Bernich Enterprises, Inc.), 520 Popps Ferry Road, Biloxi, MS 39532. Representative: Gertrude B. Henriques, 520 Popps Ferry Road, Biloxi, MS 39532. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in special and charter operations, between points on the Mississippi Gulf Coast and New Orleans, LA, New Orleans International Airport, Mobile, AL, and Mobile Airport, for 180 days. Applicant intends to serve the commercial zones of all points and places included in this application. Supporting shippers: There are approximately five statements of support attached to the application which may be examined at the Interstate Commerce Commission in DC, or copies of which may be examined at the field office named below. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East East Amite Building, Jackson, MS 39201.

By the Commission.

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

[FR Doc. 78-20477 Filed 7-21-78; 8:45 am]

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[7035-01]

[Notice No. 90]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JULY 24, 1978.

Synopses of orders entered by Division 3 of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, 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. As provided in the Commission's General Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before August 23, 1978. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

MC-FC-76612. By decision dated July 14, 1978, the Commission, Division 3, acting as an Appellate Division, approved the transfer to Bill Rohrbaugh's Charter Service, Inc., 121 North Ruth Avenue, Spring Grove, PA 17362, of the operating rights of Clyde's Charter Bus Service, Inc., 301 Furnace Branch Road, Glen Burnie, MD 21061, set forth in Certificates Nos. MC 128577 and MC 128577 (Sub-1), issued March 27, 1967, and June 25, 1970, as follows: Passengers and their baggage, and express and newspapers in the same vehicle with passengers, between Baltimore, MD, and Littlestown, PA, over specified routes, serving intermediate points, and between Eldersburg, MD, and Sykesville, MD, over specified routes, serving intermediate points; incidental charter operations may be conducted under the above specified rights; between Baltimore, MD, and Westminster, MD, as an alternate route for operating convenience only; and between Baltimore, MD, and Gettysburg, PA, over specified routes, serving all intermediate points, with incidental charter operations authorized. S. Harrison Kahn, Suite 733, Investment Building, Washington, DC 20005, attorney for applicants. Petitions for reconsideration may be filed within 30 days from the date of this publication.

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

[FR Doc. 78-20479 Filed 7-21-78; 8:45 am]

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[7035-01]

[Notice No. 683]

ASSIGNMENT OF HEARINGS

JULY 19, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 120257 (Sub-39), K. L. Breeden & Sons, Inc., now being assigned for hearing on August 17, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 120822 (Sub-3), Industrial Freight System, Inc., now being assigned for hearing on October 11, 1978 (8 days), at Los Angeles, CA, in a hearing room to be later designated.

MC 111231 (Sub-222), Jones Truck Lines, Inc., now being assigned October 11, 1978 (8 days), at Atlanta, GA, in a hearing room to be later designated.

MC 44914 (Sub-3), Willamette Valley Transfer Co., is now assigned for continued hearing September 11, 1978 (1 day) at Portland, OR, at a location to be later designated.

MC 61592 (Sub-408 and 417F), Jenkins Truck Lines, Inc. and MC 117574 (Sub-291), Daily Express, Inc., now assigned September 6, 1978 at Nashville, TN, are advanced to September 6, 1978 (1 day) at Little Rock, AR, at a location to be later designated.

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

[FR Doc. 78-20478 Filed 7-21-78; 8:45 am]

# sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6712-01]

1

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, July 26, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Oral argument.

MATTER TO BE CONSIDERED: Petitions to deny Educational Broadcasting Corp.'s renewal application (WNET-TV, Newark, N.J.).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone 202-632-7260.

Issued: July 19, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
*Secretary.*

[S-1495-78 Filed 7-20-78; 11:56 am]

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[6740-02]

2

JULY 19, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., July 26, 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—151ST MEETING, JULY 26, 1978, REGULAR MEETING

CAP-1. Docket No. ER78-390, Iowa-Illinois Gas & Electric Co.
CAP-2. Docket No. ER78-435, Florida Power & Light Co.
CAP-3. Docket No. ES78-42, Kansas Gas & Electric Co.
CAP-4. Project No. 2792, city of Delta Colo.
CAP-5. Project No. 459, Union Electric Co.
CAP-6. Project No. 2803, Lawrence Gleeson.
CAP-7. Docket No. ER78-414, Delmarva Power & Light Co.

I. ELECTRIC RATE MATTERS

ER-1. Docket No. ER78-463, Montaup Electric Co., Blackstone Valley Electric Co., and Brockton Edison Co.
ER-2. Docket No. ER78-460, Potomac Edison Co.
ER-3. Docket No. ER78-374, Central Telephone & Utilities Co.
ER-4. Docket No. ER78-433, Oklahoma Gas & Electric Co.
ER-5. Docket No. ER76-495 (Phase II), Carolina Power & Light Co.
ER-6. Docket Nos. ER76-530, ER76-626, ER76-717, and ER76-721, Arizona Public Service Co.
ER-7. Docket Nos. E-9499 and E-7502, Minnesota Power & Light Co., Docket No. ER76-20, Superior Water, Light & Power Co.
ER-8. Docket Nos. ER76-149 and E-9537, Public Service Co. of Indiana, Inc.
ER-9. Docket No. ER76-205, Southern California Edison Co.

II. LICENSED PROJECT MATTERS

P-1. Project No. 553, city of Seattle, Department of Lighting.

MISCELLANEOUS AGENDA—151ST MEETING, JULY 26, 1978, REGULAR MEETING

M-1. ERA's proposed rule—Allocation regulations revision for propane and other natural gas liquids.
M-2. Docket No. RM78- , Delegation of the Commission's authority to various staff office directors.

GAS AGENDA—151ST MEETING, JULY 26, 1978, REGULAR MEETING

CAG-1. (A) Docket No. RP78-64, Midwestern Gas Transmission Co., (B) Docket No. RP78-65, East Tennessee Natural Gas Co.
CAG-2. Docket No. RP78-36, Southern Natural Gas Co.
CAG-3. Docket No. RP72-134 (PGA Nos. 78-4a, 78-5a, and 78-6), Eastern Shore Natural Gas Co.
CAG-4. Docket No. RP72-41, Western Transmission Corp.
CAG-5. Docket No. CI77-321, Cabot Corp.
CAG-6. Docket No. CI78-394, Amoco Production Co.
CAG-7. Docket No. CI78-739, Texas Pacific Oil Co., Inc.
CAG-8. Docket No. CI78-789, Mesa Petroleum Co.
CAG-9. Docket No. CI78-429, Mesa Petroleum, Co.
CAG-10. Docket No. CI78-745, Southland Royalty Co.
CAG-11. Docket No. CI78-456, Southland Royalty Co.
CAG-12. (A) Docket No. CI77-483, CIG Exploration, Inc., (B) Docket No. CI77-780, Atlantic Richfield Co., Docket No. CI78-7, Highland Resources, Inc., Docket No. CI78-147, CIG Exploration, Inc.
CAG-13. Docket Nos. G-3912, et al., Ashland Exploration, Inc. (successor to Ashland Oil, Inc.), et al.
CAG-14. Docket No. CP76-16, Tenneco LNG, Inc.
CAG-15. Docket No. CP78-324, Transcontinental Gas Pipe Line Corp.
CAG-16. Docket No. CP77-617, Texas Gas Transmission Corp.
CAG-17. Docket No. CP77-628, Texas Gas Transmission Corp.
CAG-18. Docket No. CP78-364, Michigan Wisconsin Pipe Line Co.
CAG-19. Docket No. CP78-126, Blue Dolphin Pipe Line Co.
CAG-20. Docket No. CP78-288, Columbia Gulf Transmission Co., Consolidated Gas Supply Corp., Docket No. CP78-298, Sea Robin Pipeline Co.
CAG-21. Docket No. CP78-71, Natural Gas Pipeline Co. of America, Columbia Gulf Transmission Co., Northern Natural Gas Co., Southern Natural Gas Co., Docket No. CP78-197, Tennessee Gas Pipeline Co., a division of Tenneco Inc., Docket No. CP78-302, Natural Gas Pipeline Co. of America, Columbia Gulf Transmission Co.
CAG-22. Docket No. CP78-326, Florida Gas Transmission Co.
CAG-23. Docket No. CP74-317, et al., Great Lakes Gas Tranmission Co.
CAG-24. (A) *Continental Oil Co., et al.*, v. *F.E.R.C., 5th Cir. No. 78-2011.*, (B) *Tenneco Oil Co.* v. *F.E.R.C., 9th Cir. No. 78-1854.*

I. PIPELINE RATE MATTERS

*A. Pipeline rates*

RP-1. Docket No. RP73-36 (PGA No. 78-3) (DCA No. 78-2), Panhandle Eastern Pipeline Co.
RP-2. Docket No. RP73-43 (PGA No. 78-4), Mid-Louisiana Gas Co.
RP-3. Docket No. RP74-100 (PGA No. 78-6), National Fuel Gas Corp.
RP-4. Docket No. RP78-71, Natural Gas Pipeline Co. of America.

RP-5. Docket No. RP78-77, Mississippi River Transmission Corp.
RP-6. Docket No. RP78-75, Northern Natural Gas Co., Peoples Natural Gas Division.
RP-7. Docket No. RP78-78, Natural Gas Pipeline Co. of America.
RP-8. Docket No. RP78-62, Panhandle Eastern Pipe Line Co.
RP-9. Docket Nos. AR61-2, AR69-1, et al., Area Rate Proceeding (Southern Louisiana Area).
RP-10. Docket No. RP74-41, Texas Eastern Transmission Corp.
RP-11. Docket Nos. RP75-96 and RP76-100, Michigan Wisconsin Pipe Line Co.
RP-12. Docket No. RP75-105, Columbia Gulf Transmission Co. Docket No. RP75-106, (Consolidated Taxes), Columbia Gas Transmission Corp.

II. PRODUCER MATTERS

CI-1. Docket No. CI75-602, Roy M. Huffington, Inc.
CI-2. Docket No. RI76-50, AMAREX, Inc., (operator), et al.
CI-3. Docket No. RI78-28, *Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al.*

III. PIPELINE CERTIFICATE MATTERS

*A. Pipeline certificates*

CP-1. Docket No. CP74-192, Florida Gas Transmission Co.
CP-2. Reserved.
CP-3. Reserved.
CP-4. Reserved.

*B. Order No. 2 Authorization*

CP-5. Docket No. CP78-351, Transcontinental Gas Pipe Line Corp.
CP-6. Reserved.
C. LNG.
CP-7. Docket No. CP77-216, et al., Distrigas of Massachusetts Corp.

KENNETH F. PLUMB,
*Secretary.*

[S-1507-78 Filed 7-20-78; 3:57 pm]

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[6720-01]

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 3 p.m., July 24, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Branch office application—San Diego Federal Savings & Loan Association, San Diego, Calif.
Branch office application—West Side Federal Savings & Loan Association, New York, N.Y.
Consideration of assessments of Federal Home Loan Banks.
Consideration of proposed acquisition of State Savings & Loan Co., South Euclid, Ohio, and Citizens Home Savings Association Co., Lorain, Ohio, by Statewide Financial Corp., South Euclid, Ohio.

No. 108. July 29, 1978.

Announcement is being made at the earliest practible time.

[S-1506-78 Filed 7-20-78; 11:56 am]

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[4110-24]

4

INSTITUTE OF MUSEUM SERVICES.

TIME AND DATES: 9 a.m., Sunday and Monday, July 30-31, 1978.

PLACE: July 30, National Air and Space Museum, 7th and Independence Avenue SW., Room 3551, Washington, D.C. 20560; July 31, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 339A, Washington, D.C. 20201.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of panelists recommendations for grant awards.
2. Consideration of draft of final regulation for the Museum Services Program.
3. Chairman's report.
4. Director's report.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Lee Kimche, Director, Institute of Museum Services, Room 326H, 200 Independence Avenue SW., Washington, D.C. 20201, 202-245-6753.

Date of notice: July 21, 1978.

LEE KIMCHE,
*Director.*

JULY 20, 1978.

[S-1508-78 Filed 7-20-78; 3:57 pm]

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[7590-01]

5

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of July 17 (Changes).

PLACE: Chairman's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, July 18, 4:30 P.M.—Briefing by Department of State on nuclear export and nonproliferation matters, approximately 1 hour (Closed—Exemption 1). (Replaces July 18 discussion of personnel matter, which is canceled.)
Wednesday, July 19, 2 p.m.—(Item 2) Discussion of OIA/OGC inquiry in testimony of the Executive Director for Operations, approximately 2½ hours (Closed—Exemption 1). (Replaces briefing on site evaluation which is canceled.)

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

JULY 17, 1978.

ROGER M. TWEED,
*Office of the Secretary.*

[S-1505-78 Filed 7-20-78; 11:56 am]

federal register

MONDAY, JULY 24, 1978
PART II

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Health Care Financing Administration

■

# MEDICAL ASSISTANCE PROGRAMS

## State Medicaid Fraud Control Units

[4110-35]

Title 42—Public Health

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

## PART 450—ADMINISTRATION OF MEDICAL ASSISTANCE PROGRAMS

### State Medicaid Fraud Control Units

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

ACTION: Final regulations.

SUMMARY: These regulations amend the rules under which State medicaid fraud control units will receive 90 percent Federal matching funds for the investigation and prosecution of fraud in State medicaid programs. Final regulations were published on January 23, 1978, with opportunity for public comment. We made a commitment at that time to consider the comments with a view to revision of the final regulations. The amendments clarify the policies in the January 23, 1978 regulations as a result of public comments received or our experience in working with States that are interested in establishing a Fraud Control Unit. Some editorial changes have also been made.

EFFECTIVE DATE: These regulations are effective on July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Don E. Nicholson, Director, Office of Program Integrity, Health Care Financing Administration, U.S. Department of Health, Education, and Welfare, Room 500, East High Rise, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-8763.

SUPPLEMENTARY INFORMATION: Pub. L. 95-142, the Medicare-Medicaid Anti-Fraud and Abuse Amendments, contains several measures designed to prevent fraud or abuse in the provision of medical assistance and health services in programs authorized by the Social Security Act. Section 17 of Pub. L. 95-142 authorizes Federal funding for State medicaid fraud control units to support the investigation and prosecution of fraud in State medicaid programs administered under Title XIX of the Social Security Act.

Final regulations were published in the FEDERAL REGISTER on January 23, 1978 (43 FR 3118-3122) to implement this new program. Many States have expressed an interest in this funding and the Department is working to help them establish units and meet the regulatory requirements.

Approximately 60 comments were received on the final rule or the discussion draft which was circulated prior to the January 23 publication of the final regulations. These comments were received from State Governors (17), Members of Congress (7), State attorneys general (8), State departments of health or welfare (18), and other Government agencies, associations, and other individuals. Additionally, numerous inquiries have been received from State agencies interested in receiving funding. The Health Care Financing Administration (HCFA) has held a number of conferences and meetings with various representatives of State Governments in order to learn of their problems and concerns. HCFA is making every effort to encourage States to establish fraud control units, to help them overcome problems, and to revise the regulations to eliminate unnecessary obstacles. Many of the concerns expressed are directed at the statute's explicit provisions but some are more directed to the Department's interpretation of the statute and the congressional intent. A governor and a Congressman suggested that the rules should be more flexible and broadened. We have attempted to be as flexible as possible within the constraints of what we see as a clear congressional mandate.

All of the comments or inquiries received have been reviewed, evaluated and, where appropriate, incorporated in our development of the revised final rule. The final amendments to the regulations further expand and clarify the policies for certification and funding of State Medicaid Fraud Control Units.

#### DISCUSSION OF MAJOR COMMENTS

Responses to the most significant comments and changes to the regulations are described below:

##### 1. SEPARATION FROM THE MEDICAID AGENCY

A major objection concerned the requirement that the fraud control unit must be "separate and distinct" from the State medicaid agency (§ 450.310(e)). As we explained in the preamble to the original regulations, the unit can be in an "umbrella agency" which also contains the medicaid agency, so long as the umbrella agency is not designated as the medicaid agency. Several commenters indicated that we should allow the unit to be within a large umbrella department officially designated as the medicaid agency, so long as it is "separate and distinct" from the medicaid operating component. We believe that it would not be a reasonable interpretation of the statute to allow the fraud control unit to be within an umbrella agency designated as the medicaid agency. The statute explicitly requires that the unit must be "separate and distinct" from the medicaid agency. (Section 1903(q)(2) of the act.) However, a State may redesignate the medicaid operating component as the medicaid agency and still have a unit "separate and distinct" from the medicaid agency within an umbrella department.

In addition, several other commenters disagreed on the requirements of § 450.310(e)(2), which prohibits review of the unit's activities by the State medicaid agency. In our view, prohibiting such review is required in order to implement the statutory separation of the unit from the medicaid agency and is simply a clarification of the term "separate and distinct."

##### 2. UNIT STAFFING REQUIREMENTS

A number of comments involved the staffing provisions of § 450.310(g), which require a minimum of one attorney, one investigator, one auditor, and sufficient overall staff to handle effectively the expected workload. Several of the smaller States commented that the minimum professional staffing requirements were either too large or unnecessary.

It is clear that Congress intended for these units to bring together specialized expertise in medicaid fraud by developing a team of lawyers, investigators, and auditors. (See H. Rept. 95-393, part II, p. 81; S. Rept. 95-453, p. 36.) The work of temporary or part-time staff or the occasional investigation or prosecution of isolated cases by different investigators and prosecutors does not contribute to the development of a team with this specialized expertise. Thus, the unit should not serve as a channel for the funding of fragments of work by several agencies or offices or for the funding of a part of the activities of a larger office through a proration of time to the unit's functions or the rotation through the unit of temporary employees or detailees. In our view, the statutory purpose can be achieved only if the funding for these units is limited to the direct efforts of the unit's full-time, long-term staff.

For these reasons, we have revised § 450.310(j)(5) to make it clear that FFP will not be provided to the extent that specified management, audit, investigative, and legal functions of the unit are performed by persons who are not full-time employees of the unit. The purpose is to prohibit both the contracting out of vital functions and the use of employees whose responsibilities are split between two agencies.

As a related matter, other comments asked for clarification of the meaning of the term "employ." We recognize that there may be State personnel policies that restrict the ability of the

unit to hire certain types of professionals and that the best qualified persons may be available only by assignment or detail from another agency. Therefore, we have defined "employ" and "employee," at § 450.310(a)(5), to include details or assignments from another government agency, if the person detailed is under the supervision of the Unit rather than the agency from which he is detailed. For the reasons discussed above, we have also required that all employees (including any one on detail from another agency) must work full-time on the unit's activities and that the period of employment (or detail) must be intended to last at least one year.

Another comment suggested that § 450.310(h)(1)(vii), which requires the unit to provide the names and qualifications of senior staff in its application, be expanded to include position descriptions for any professional jobs unfilled at the time of application. While reviewing the suggestion, we realized that it will be useful to obtain descriptions for all professional positions. We have amended the regulation accordingly.

#### 3. RELATIONSHIP TO, AND AGREEMENT WITH, THE MEDICAID AGENCY

Some commenters asked that § 450.80(d) amplify the division of responsibility between the unit and the medicaid agency. Although we concur in the need for clarifying this relationship and have made several revisions elsewhere in the regulations, we have not revised § 450.80(d). We think that that section is sufficiently clear for the limited purpose it serves. It provides that if there is a unit in the State, then the responsibilities being performed by the unit, which would otherwise be required of the medicaid agency, need not be duplicated by the medicaid agency in order to comply with $450.80. All other responsibilities specified in § 450.80, of course, remain those of the medicaid agency. The establishment of a unit will have no necessary impact on existing medicaid utilization review components, if all cases of suspected fraud developed are referred to the unit and the unit is given full access to such component's files.

Other comments indicated that § 450.310(j)(5)(ii), regarding the prohibition on funding the unit for certain responsibilities of the medicaid agency, was unclear. We have revised the language in § 450.310(j)(5) (ii) and (iii) in an attempt to clarify that certain existing responsibilities of the medicaid agency remain the responsibility of the medicaid agency, even though they pertain to the detection of fraud. Thus, the mailing of "explanation of benefit" forms, the screening of claims to identify potential fraud and abuse, and routine notifications of penalty provisions are still the responsibility of the medicaid agency.

One State asked that we add a specific exemption to 45 CFR 205.50 to provide the unit with access to medicaid agency filed regarding welfare recipients. On the other hand, another comment suggested that § 450.80(a)(8)(ii) was too broad and that we should permit the medicaid agency to withhold nonmedicaid records from the unit.

Under § 450.80(a)(8)(ii), the medicaid agency is required to grant the unit access to information which the unit determines may be useful in carrying out its responsibilities. Since it is not the function of the unit to investigate recipient fraud, the unit will not require extensive access to recipient files. Access to recipient information may be necessary, however, in order to obtain information that is necessarily connected with the investigation or prosecution of provider fraud, fraud in the administration of the program, or the review, investigation, or prosecution of complaints of the abuse or neglect of patients in health care facilities.

Another State agency suggested that the unit be required to agree to act promptly on medicaid agency referrals, keep that agency informed of action on cases, and make reports to HEW available to the agency. We do not oppose this kind of agreement or understanding in a State, as long as the medicaid agency does not discourage prosecutions when the unit believes they are warranted. Moreover, the medicaid agency will want to know about cases being pursued by the unit, if payments to providers should be suspended or if other administrative action should be taken prior to prosecution. We believe, however, that this is a matter for the two State agencies to deal with and have not revised the regulations on this issue.

Similarly, another State suggested the unit be responsible for reviewing and approving all medicaid agency policy statements, manuals, and instructions to providers. We would not oppose States arranging for the unit to get advance copies of such materials and considering its comments or objections to any matter. However, we do not think that this should be made a requirement of these regulations.

#### 4. RECIPIENT FRAUD

The original regulations required the medicaid agency to refer all cases of suspected fraud to the unit (§ 450.80(a)(8)(i)). Since § 450.310(f) did not list recipient fraud as a function of the unit and the preamble indicated that the unit would only be responsible for provider fraud, we intended that only cases of suspected provider fraud would be required to be referred. We have amended § 450.80(a)(8)(i) to make this explicit.

Although the original regulations prohibited payment of Federal financial participation (FFP) for reimbursement of expenditures for the performance of functions other than the unit's functions as specified in § 450.310(f), several questions were raised by States as to whether the funding of recipient fraud investigations or prosecutions was covered by this section. A State attorney general commented that recipient fraud control should not be covered. Conversely, several States and an association commented that it should be covered. In our view the unit's statutory authority to investigate and prosecute fraud in the "provision of medical assistance" does not reach recipient fraud, except to the extent that a recipient is suspected of being involved in a conspiracy with a provider. (See sec. 1903(q)(3) of the act.) In order to preclude further uncertainty, we have placed an explicit statement of this restriction in the regulations, at § 450.310(j)(5)(v).

#### 5. COLLECTION AND REPORTING OF OVERPAYMENTS

A number of commenters expressed uncertainty as to whether the medicaid agency or the unit is responsible for the collection of overpayments. We believe that § 450.310(f)(3) makes it clear that either the unit or the appropriate State agency may collect overpayments.

Several States indicated that § 450.310(i)(1), (iv) and (v) were unclear as to the reporting of overpayment collections. We have revised these sections to clarify that a unit must report both its collection activities and, separately, those collection activities of the medicaid agency pursuant to referrals from the unit.

#### 6. PATIENT ABUSE OR NEGLECT

Several States commented that the regulations required the unit to investigate complaints of the abuse or neglect of patients of health care facilities where there is substantial potential for criminal prosecution, while the statute allows the unit to refer such cases to another agency. (Section 1903 (q)(4) the act). We agree with this comment and have correspondingly revised § 450.310(f)(2) to permit the unit either to investigate the complaint or to refer it to another agency.

A few comments indicated that it would be appropriate for other existing agencies to review or investigate such abuse cases, rather than the unit. In our view, although the statute requires that the unit have the capability to review complaints and the regulations require that the unit deal with those complaints presented to it, nei-

ther the statute nor the regulations require the unit to supplant other ongoing activities in this area.

Several comments proposed that the unit could well investigate and prosecute, or refer for prosecution, instances involving misuse of private funds being held for patients by health care facilities and that this would be a natural outgrowth of an investigation of the facility for program fraud or patient abuse or neglect. The unit would seem to have the requisite skills and in some States might be the only agency able to deal effectively with this activity. Since the statute authorizes the unit to investigate any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance * * *". (Section 1903(q)(3)), we have amended § 450.310(f)(2) to authorize the unit to undertake this responsibility.

7. COOPERATION WITH FEDERAL AUTHORITIES

In response to a comment from the U.S. Department of Justice we have added a paragraph (f)(5) to § 405.310 requiring the units to cooperate with Federal authorities in Federal investigations or prosecutions involving subjects of potential or actual investigations or prosecutions by the units. While prosecution of medicaid fraud cases is primarily a responsibility of the States, there is concurrent Federal jurisdiction for such prosecutions and a substantial Federal interest in insuring that those who defraud the medicaid program are properly prosecuted. Moreover, there may be a particularly strong Federal interest in certain cases, such as when the medicaid fraud suspect is also suspected of medicare fraud or some other fraud against the Federal Government or where Federal authorities believe that the responsible State authorities are not adequately pursuing a prosecution. Consequently, it is important that Federal authorities have information about the unit's investigations and prosecutions in order to decide whether to exercise Federal jurisdiction.

In view of the fact that some cases may be appropriate for joint referral to the Federal and State prosecuting authorities or only to the Federal authorities because of the nature of the case or the availability of resources, HEW encourages units, or other State offices, to consult with appropriate HEW officials prior to the referral of a case to the United States Department of Justice.

One Attorney General commented that he would prefer that HEW not have access to his investigative and prosecutive files as provided in § 450.310(i)(2). We believe this access is necessary to insure cooperation in joint Federal and State investigations or prosecutions and to fulfill the Department's monitoring role over the funding grant. The monitoring of the unit's activities is necessary to insure that the unit continues to meet eligibility requirements, that all expenditures reported are eligible for 90 percent FFP, and for all overall evaluation of the program. We expect to request the units for the same sort of periodic reports on their activities, including cases opened, as is done by the medicaid agency under 42 CFR 450.80(a)(4). With respect to the use of any investigative information, we will carefully safeguard the privacy of all individuals and will cooperate with State officials in our response to any requests under the Freedom of Information or Privacy Acts which might effect an on-going investigation or prosecution. Further, we will, to the extent necessary, exercise all exemptions from mandatory disclosure under these Acts for the purpose of protecting the privacy of persons involved and to prevent the compromising of active investigations.

8. FUNDING LIMITS

A Governor and a State agency requested that the 90 percent funding continue indefinitely. Such continuation would require legislative changes to section 1903(a)(6) of the act, which currently has a 3-year limitation. A State Attorney General asked how 50 percent funding will be possible after the end of the 3 years. An association suggested we provide by rule that funding at 50 percent continue for the units after the termination of the statutory funding. We believe Congress intended that the units would receive 50 percent funding after the 3 years, but did not make any specific provision for such in the statute. However, it would not be possible to continue the funding by regulation without statutory authority. We do believe that if the units were to become a part of the medicaid agency or enter into a contract for medicaid fraud investigation after the expiration of funding under section 1903(a)(6), most of the activities of the unit (other than prosecutorial) may be funded under section 1903(a)(7) at 50 percent FFP.

One State agency asked for clarification of § 450.310(j)(3), regarding the maximum FFP that will be available for the unit in any quarter. The maximum is determined based on one-quarter of 1 percent of Federal and State expenditures under the medicaid plan. The State asked if these expenditures would include those State expenditures that have been disallowed for FFP based on a determination that they are not covered by the State plan. Disallowed expenditures would not be included in the expenditure computation.

As a related issue, the statute does not make any provision for the unit to assume additional responsibilities, beyond those specified in this section, and to receive FFP for such activities under section 1903(a)(7) of the act. A contract with the medicaid agency, under which the unit would provide services under the State plan, would appear to violate the requirement that the unit be "separate and distinct from the medicaid agency." (§ 450.310(e)(1).)

9. RETROACTIVE CERTIFICATION AND PAYMENT

We received a number of questions concerning the clarification of retroactive certification and reimbursement for expenses incurred prior to the effective date of certification. The original regulations were not clear whether certification could be effective as of the date a complete application was submitted and all other requirements of the statute were met or only on the date when the application was approved.

We have revised § 450.310(j)(2)(iii) to reflect our interpretation that certification will be effective as of the date the Secretary determines that all requirements for certification have been met. (Since submission of a complete application is a requirement for certification, the effective date of certification cannot be earlier than that date.) However, the Secretary will provide reimbursement for the entire quarter within which the effective date of certification falls. (See § 450.310(j)(2)(iii) as revised.)

10. ABUSE INVESTIGATIONS

Several States commented that the unit should also be responsible for the investigation of suspected instances of non-fraudulent program abuse. Although we recognize that there are often practical difficulties in separating cases of suspected fraud from cases of program abuse, we are convinced that the statute's silence regarding the unit's responsibilities for program abuse was deliberate. The central purpose of the unit is the creation of a team of investigators, auditors, attorneys and other experts who combine their talents for unified investigations to support criminal prosecutions. Successful criminal prosecutions were viewed by the Congress as vitally needed to restore confidence in the medicaid program and to deter other providers from committing fraud (see House Interstate and Foreign Commerce Committee, H. Rept. 95-393, part II, p. 79; Senate Finance Committee, S. Rept. 95-453, p. 35). Program abuse does not necessarily involve criminal conduct. It often involves

other matters which result in the provision of unnecessary services which are paid for by medicaid. Virtually any activity of the State medicaid agencies may be described as aiming to some extent at the control of abuse through claims processing, utilization control, and other reviews or analysis to determine proper medical treatments and payments. Much of this activity is already subject to incentive funding for systems of mechanized claims processing (Section 1903(a)(3) of the act) and there is no indication that Congress intended an overlap of funding for such matters.

We have, however, revised the language of § 450.310(j)(5)(i) which prohibited funding of abuse investigations. Several commenters said that the prohibition was ambiguous and made the point that when an investigation is begun it is often unclear as to whether either fraud or abuse has occurred. The unit will, therefore, investigate many fraud cases which subsequently become abuse cases. Our revision will make it clear that FFP will be available where there were reasonable indications of fraud while the case was being investigated: *Provided*, The case was subsequently referred to the medicaid agency after a determination that there was no reasonable possibility of a fraud prosecution.

11. ACCESS TO RECORDS

The present regulations require the medicaid agency to arrange access for the unit to provider records under 42 CFR 450.21. One commenter suggested that medicaid regulations at § 450.80(a)(8)(v) be amended to place an obligation on providers to allow the unit direct access to provider records. We are considering revising § 450.21 to require that the provider agreement include an agreement that the provider would allow the unit, and the Secretary, access to all provider records. However, that revision is outside the scope of these regulations.

One State advised that they found the existing regulations unclear and did not perceive how such access would be arranged. When necessary, we anticipate that medicaid agency staff would either accompany fraud control unit staff or arrange for them to gain access and make copies of provider records, as requested.

An association suggested that the regulations provide broader protections for the privacy rights of individuals, especially with respect to patient medical records to which the unit will have access. We note that in § 450.80(a)(8)(v), we make the units subject to the provision of the act which protects patient privacy (Section 1902(a)(7)) and we have added a general provision for the unit to protect the privacy rights of all individuals (see § 450.310(f)(6)).

12. TECHNICAL AMENDMENT

Since we received several inquiries as to the applicability of the general HEW grant administration regulations (45 CFR part 74), we have added language to § 450.310(j)(1) to make it explicit that these regulations are applicable except where contrary provisions are made in part 450 or in the grant award.

42 CFR part 450 is amended as set forth below:

1. Section 450.80 is amended by revising paragraph (a)(8)(i) to read as follows:

**§ 450.80 Fraud in the medical assistance programs.**

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

* * * * *

(8) In a State with a State medicaid fraud control unit established and certified under § 450.310, provide that the State agency will:

(i) Refer all cases of suspected provider fraud to the unit;

* * * * *

2. Section 450.310 is amended by adding new paragraphs (a)(5) and (a)(6), and revising paragraphs (c), (f), (h)(1)(vii), (i)(1)(iv) and (v), and (j)(1), (2)(iii), and (5), to read as follows:

**§ 450.310 State medicaid fraud control units.**

(a) *Definitions.* As used in this section, unless otherwise indicated by the context: * * * (5) "Employ" or "employee", as the context requires, means full-time duty intended to last at least a year. It includes an arrangement whereby an individual is on full-time detail or assignment to the unit from another government agency, if the detail or assignment is for a period of at least 1 year and involves supervision by the unit.

(6) "Provider" means an individual or entity which furnishes items or services for which payment is claimed under medicaid.

* * * * *

(c) *Basic requirement.* A State medicaid fraud control unit must be a single identifiable entity of the State government certified by the Secretary as meeting the requirements of paragraphs (d) through (g) of this section.

* * * * *

(f) *Duties and responsibilities of the unit.* * * * (2) The unit shall also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities.

(i) If the initial review indicates substantial potential for criminal prosecution, the unit shall investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(ii) If the initial review does not indicate a substantial potential for criminal prosecution, the unit shall refer the complaint to an appropriate State agency.

* * * * *

(5) The unit shall make available to Federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the State plan and shall cooperate with such officials in coordinating any Federal and State investigations or prosecutions involving the same suspects or allegations.

(6) The unit shall safeguard the privacy rights of all individuals and shall provide safeguards to prevent the misuse of information under the unit's control.

* * * * *

(h) *Application, certification, and recertification.*—(1) *Initial application.* In order to receive FFP under this section, the unit must submit to the Secretary, an application approved by the Governor, containing the following information and documentation.

* * * * *

(vii) Current and projected staffing, including the names, education, and experience of all senior professional staff already employed and job descriptions, with minimum qualifications, for all professional positions.

* * * * *

(i) *Reporting requirements.*—(1) *Annual report.* At least 60 days prior to the expiration of the certification period, the unit shall submit to the Secretary a report covering the last 12 months (the first 9 months of the certification period for the first annual report), and containing the following information:

* * * * *

(iv) The number of recovery actions initiated by the unit; the number of recovery actions referred to another agency; the total amount of

overpayments identified by the unit; and the total amount of overpayments actually collected by the unit;

(v) The number of recovery actions initiated by the medicaid agency under its agreement with the unit; and the total amount of overpayments actually collected by the medicaid agency under this agreement;

* * * * *

(j) *Federal financial participation (FFP).*—(1) *Rate of FFP.* Subject to the limitations specified in this paragraph, the Secretary will reimburse each certified State medicaid fraud control unit, by an amount equal to 90 percent of the costs incurred by that unit which are attributable to carrying out its functions and responsibilities under this section. The costs subject to reimbursement will be determined under 45 CFR part 74, except as provided otherwise in this part or in the grant award.

(2) *Basis and period of payment.* * * * (iii) The Secretary may grant certification retroactive to the date on which the unit first met all the requirements of the statute and of this section. For any quarter with respect to which the unit is certified, the Secretary will provide reimbursement for the entire quarter.

* * * * *

(5) *Costs not subject to FFP.* FFP is not available under this section for expenditures attributable to:

(i) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud;

(ii) Efforts to identify situations in which a question of fraud may exist, including the screening of claims, analysis of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received;

(iii) The routine notification of providers that fraudelent claims may be punished under Federal or State law;

(iv) The performance by a person other than a full-time employee of the unit of any management function for the unit, any audit or investigation, any professional legal function, or any criminal, civil, or administrative prosecution of suspected providers;

(v) The investigation or prosecution of cases of suspected recipient fraud not involving suspected conspiracy with a provider; or

(vi) Any payment, direct or indirect, from the unit to the medicaid agency, other than payments for the salaries of employees on detail to the unit.

(Secs. 1102 and 1903(g) of the Social Security Act; 49 Stat. 647, 91 Stat. 1201 (42 U.S.C. 1302 and 1396b(g)).)

(Catalog of Federal Domestic Assistance Program No. 13.775, State medicaid fraud control units.)

Dated: June 8, 1978.

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

Approved: July 14, 1978.

JOSEPH A. CALIFANO, Jr.,
*Secretary.*

[FR Doc. 78-20225 Filed 7-21-78; 8:45 am]

federal register

MONDAY, JULY 24, 1978
PART III

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Health Care Financing Administration

■

# GRANTS TO PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

[4110-35]

Title 42—Public Health

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

## PART 462—PROFESSIONAL STANDARDS REVIEW

### Grants to Professional Standards Review Organizations

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

ACTION: Final rule.

SUMMARY: This rule: (1) Establishes eligibility criteria and other conditions for the designation and funding of Professional Standards Review Organizations (PSRO); (2) sets forth organizational and application requirements which must be met by an organization seeking to be designated as a PSRO; (3) requires that the designation and funding of PSRO's be made through a grant mechanism; and (4) prescribes the length of the grant period and establishes procedures for the nonrenewal and termination of grants to PSRO's. This rule implements sections 1152, 1154, and 1155(f)(2) and (3) of the Social Security Act. The Secretary is authorized under these sections to award grants to qualified organizations by which they are either conditionally or fully designated as PSRO's. The regulation will replace the procurement contract process presently used with a grant system and codify and simplify organizational requirements applicable to PSRO's.

EFFECTIVE DATE: July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Hal Belodoff, 202-245-0132.

SUPPLEMENTARY INFORMATION:

#### Background

The original PSRO statute called for the use of agreements for providing financial support to PSRO's. (See section 1155(f)(1) of the Social Security Act, 42 U.S.C. 1320c-4(f)(1)). However, the agreement mechanism was not defined by the law or legislative history. Further, there was no precedent for the use of such a mechanism within the Public Health Service at the time it became necessary to make awards to qualified organizations in June 1974. Procurement contracts were chosen as the means to finance PSRO activity. The procurement process has been criticized by PSRO's as being inflexible and too time consuming. We agreed with the PSRO's view that procurement contracts are not the appropriate mechanism for supporting PSRO's, and, therefore, supported an amendment to the PSRO statute which would clarify congressional intent on this matter. Section 5(c) of the recently enacted Medicare-Medicaid Antifraud and Abuse Amendments of 1977 (Pub. L. 95-142) provides that agreements with PSRO's may be in the form of grants or assistance agreements. Since it may be some time before OMB and the executive departments develop rules governing the use of assistance agreements, we believe that the grant system should be instituted as soon as possible for providing assistance to PSRO's. Grants will allow PSRO's greater flexibility in the development and implementation of review strategies while maintaining sufficient program and financial controls to assure effective monitoring of PSRO's. In addition, the solicitation and award process will be streamlined under a grant approach.

#### Organizational Requirements

This rule contains requirements which are necessary to assure that organizations of the type accorded special priority in designation under the law (priority PRSO's) are willing and able to perform PSRO duties and functions in an "effective, timely, and objective manner" as required by the PSRO statute (42 U.S.C. 1320c-1(b)(2)). Organizational requirements currently applied to priority PSRO's are contained in chapter V of the PSRO program manual. This rule simplifies those requirements and makes them less proscriptive. This is consistant with our overall management approach under grants. PSRO's will be given greater flexibility in deciding how they are to carry out their responsibilities and we will place greater emphasis on monitoring PSRO performance.

The Senate Finance Committee Report (Sen. Report No. 92-1230. 92nd Cong., 2nd Sess. (1972) p. 257) demonstrates congressional intent that PSRO's be independent professional associations. Although the regulation deletes many previous requirements contained in the program manual, certain requirements which address the composition and conduct of the PSRO's governing body are retained in order to prevent a PSRO from coming under the dominance of medical societies and other medical organizations.

Broad and active participation by PSRO members is also critical to the success of PSRO's. (Sen. Report No. 92-1230, pp. 259, 262.) This rule attempts to ensure this participation by requiring certain membership policies and rules controlling the election of a PSRO's governing body.

#### Reserved Sections

Certain sections have been reserved for future regulations on the criteria to be used in converting a conditionally designated PSRO to fully designated status and the application requirements to be met by an organization seeking to become a fully designated PSRO. Regulations which address these areas are currently under development and will be issued in proposed form in the near future.

A section is also reserved for eligibility criteria for alternate PSRO's—organizations which may be designated as PSRO's if priority PSRO's are not designated. A notice of proposed rulemaking on alternate PSRO's was published under part 471 of this chapter on January 27, 1978 (43 FR 3796). The final rule on alternate PSRO's will be published as § 462.5 of this part in the near future.

#### Discussion of Public Comments

On April 3, 1978, a notice of proposed rulemaking was published in the Federal Register concerning requirements for grants to PSRO's (43 FR 13970). We received comments on the proposal from seven PSRO's and three professional associations. All comments were considered in preparing the final rule. These comments and our responses to them are discussed below. Changes from the proposed rule resulting from comments received are indicated in the discussion.

In addition to changes based on public comment, other changes from the proposed rule were needed in order to make the regulation easier to read and to eliminate ambiguity from some sections. These changes are also discussed below.

#### Composition of PSRO governing body

One commentor suggested that PSRO's should be required to have consumers and health care practitioners other than physicians on their governing bodies. Another commentor suggested that PSRO's should be authorized to reserve positions on these governing bodies for health care practitioners other than physicians and for consumers. For the following reasons, we have not accepted the suggestion that PSRO's be required to include such persons on their governing bodies, but have revised the proposed rule to authorize reserving positions for them.

While we agree that involvement of consumers and health care practitioners other than physicians is desirable, we believe it is inappropriate to require their inclusion on PSRO governing bodies. We think the PSRO should be given latitude to select a governing body which reflects the particular needs and characteristics of each

PSRO. A PSRO is in a better position than we are to determine what membership will be most effective in its particular setting.

Furthermore, we have established new requirements giving health care practitioners other than physicians a significant role in PSRO activities. They must be included on advisory groups to PSRO's and statewide PSRO councils (see 42 CFR 478.102). PSRO regulations are being finalized which will require the use of health care practitioners other than physicians for the review of services provided by such practitioners (42 FR 4631, January 25, 1977).

Another commentor suggested that PSRO's should be allowed to reserve positions on their governing bodies for representatives of particular medical organizations. We do not agree with this recommendation and beleive it is contrary to congressional intent. Section 1152(b)(1)(vi) of the act prevents a PSRO from restricting the eligibility of any member for service as an officer of the PSRO or for assignment to PSRO duties. The regulation permits a PSRO to categorize some positions on the governing body to insure representation of groups that Congress recognized as having a special status in PSRO's. However, permitting the PSRO to give a preference to representatives of organized medical societies would create a restriction of eligibility for office which the Congress expressly intended to prevent. The Senate Finance Committee stated:

> * * * no physician could be barred from participation because he is or is not a member of any organized medical group or *be required to join any such group* or pay dues or their equivalent *for the privilege of becoming* a member or *officer* of any PSRO * * * Senate Finance Committee Report 92-1230, p. 259 (emphasis added).

Although reserving positions on the governing body for particular medical groups would not rule out membership of a person who was not a member of those groups, it might substantially limit his opportunity to be on the governing body. In our view, this, too, would run counter to the legislative intent.

ROLE OF HEALTH CARE PRACTITIONERS OTHER THAN PHYSICIANS IN REVIEWING OTHER PRACTITIONERS

One commentor suggested that only health care practitioners other than physicians be permitted to vote on final determinations concerning the professional conduct of those practitioners. The regulation implements the statutory requirement that only physicians are permitted to make final decisions concerning the professional conduct of other physicians (§ 462.4(f)(2)).

PSRO's are authorized, but not required, to include health care practitioners other than physicians as members of the governing body. Since the governing body might not include any health care practitioners other than physicians as members, we have not accepted the commentor's suggestion that only such practitioners be permitted to make final decisions concerning services provided by health care practitioners other than physicians.

PROCEDURES FOR CLOSED MEETINGS

The proposed rule would have required that the entire membership be given prior notice, explaining the reason for closing a meeting. This requirement was viewed as unduly restrictive. Matters raised at a closed meeting (for example, possible sanctions against a practitioner or provider, or personnel actions) might warrant a closed meeting. It would be unnecessarily burdensome in this situation to require that the meeting be terminated and reconvened after notice was provided. We have concluded that notification, even if given after the closed meeting, is a sufficient check against arbitrary action. The final rule requires that the notice to the membership be given before the meeting "whenever possible".

DISCUSSION OF OTHER CHANGES

1. Section 462.5 of the NPRM, dealing with application requirements for conditional designation, caused some confusion over whether it is applicable to organizations that have been previously designated as PSRO's under a procurement contract. The final rule has been modified to provide separate application sections for initial applications (§ 462.616) and for reapplications (§ 462.6(c)).

2. Section 462.9 of the NPRM, regarding the duration and termination of grants, has been clarified in several ways.

(a) The NPRM restated the procedures for terminating a conditionally designated PSRO as contained in § 463.11 of this chapter. Section 462.11 of this rule now merely cross references the relevant portions of § 463.11 of this chapter.

(b) Section 462.11 of this rule clarifies that the opportunity to submit written, materal and request an informal meeting applies in the case of nonrenewal, as well as termination, of grants.

(c) The NPRM did not describe in detail the manner in which the Departmental Grant Appeals Board would be used for conducting formal hearings for termination and nonrenewal of grants to fully designated PSRO's. Section 462.11 of this rule provides that hearings will be conducted by the Board using the procedures for formal hearings contained in 45 CFR 16.8(b)(2).

3. A number of technical and editorial changes have been made in order to make the regulation easier to read. For example, § 462.4 of the NPRM has been restructured in order to reduce the number of subdivisions.

4. Section 462.14 of the NPRM, on nondiscrimination, has been deleted from the final rule. This was done because of the Department's policy of avoiding duplicative restatements of applicable requirements. Title VI of the Civil Rights Act of 1964, as amended, and § 504 of the Rehabilitation Act of 1973 are, by their own terms, applicable to any program receiving Federal financial assistance. Regulations implementing these provisions are set forth in 45 CFR Parts 80, 81, and 84.

42 CFR Chapter IV is amended by adding a new part 462 to read as follows:

Sec.
462.1 Scope and applicability.
462.2 Definitions.
462.3 Eligibility for grants.
462.4 Requirements for designation as a Priority PSRO.
462.5 (Reserved).
462.6 Application requirements for conditional designation..
462.7 (Reserved).
462.8 Conditional designation as a PSRO.
462.9 (Reserved).
462.10 Limitation on period of conditional designation.
462.11 Duration, renewals and termination of grants.
462.12 Use of grant funds.
462.13 Publications and copyrights.
462.14 Applicability of 45 CFR Part 74.
462.15 Additional terms and conditions.

AUTHORITY: Secs. 1152, 1154, and 1155(f) (2) and (3), Social Security Act, 86 Stat. 1430, 1431, 1432, 1435 (42 U.S.C. 1320c-1, 1320c-3, 1320c-4(f) (2) and (3)); sec. 1102, Social Security Act, 49 Stat. 647 (42 U.S.C. 1302).

**§ 462.1 Scope and applicability.**

(a) This section implements §§ 1152, 1154, and 1155(f) (2) and (3) of the Social Security Act, which authorize the Secretary to:

(1) Designate organizations as either conditionally or fully designated PSRO's; and

(2) Make grants to such organizations for the amount of expenses reasonably and necessarily incurred in performing the duties and functions of a PSRO, as prescribed by part B, title XI of the act and regulations of this part.

(b) The regulations of this part apply to all grants designating an organization as a conditionally or fully designated PSRO.

**§ 462.2 Definitions.**

For purposes of this part:

(a) "Act" means the Social Security Act (42 U.S.C. Chap. 7).

(b) "Active practice" means direct patient care and related clinical activities, administrative duties in a medical facility or other health related institutions, or medical or osteopathic teaching or research activity.

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

(d) "Governing body" means the group, such as the trustees or directors of the PSRO, which is responsible for the policies and overall operation of the PSRO.

(e) "Nonprofit" means an organization that qualifies for an exemption from Federal income taxes under section 501(c) of the Internal Revenue Code.

(f) "Physician" means:

(1) A doctor of medicine or osteopathy licensed under State law to practice medicine, surgery, or osteopathy in the State in which the PSRO is located;

(2) An intern, resident, or Federal Government employee authorized under State or Federal law to practice medicine, surgery, or osteopathy in the PSRO area; and

(3) An individual licensed to practice medicine in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(g) "PSRO" stands for Professional Standards Review Organization.

(h) "Conditionally designated PSRO" means an organization designated as a PSRO on a trial basis.

(i) "Fully designated PSRO" means an organization designated as a PSRO after it has satisfactorily performed PSRO functions during its trial period as a conditional PSRO.

(j) "PSRO area" means a geographical area under the review jurisdiction of a single PSRO.

**§ 462.3 Eligibility for grants.**

The following two categories of organizations are eligible for grants under this part:

(a) Organizations that meet the requirements for priority PSRO's (see § 462.4 of this part); and

(b) Organizations that meet the requirements for alternate PSRO's.[1]

**§ 462.4 Requirements for designation as a priority PSRO.**

To be eligible for designation as a priority PSRO, an organization must meet the following requirements:

(a) *Composition of the organization.* The organization must: (1) Be a nonprofit professional association or a component of a nonprofit organization;

(2) Be organized in a manner that makes available professional competence to review health care services of the types and kinds for which PSRO's have review responsibilities under part B, title XI of the act;

(3) Be composed solely of licensed physicians engaged in the active practice of medicine, surgery, or osteopathy in the PSRO area;

(4) Include within its membership at least 25 percent of all physicians within the PSRO area who are eligible for membership;

(5) Maintain open membership for all physicians engaged in the active practice of medicine, surgery, or osteopathy in the PSRO area who voluntarily choose to become members and so inform the PSRO in writing;

(6) Not require membership in, or payment of dues to, any organized medical society or association, as a condition for membership;

(7) Not restrict the eligibility of any member for service as an officer or director of the PSRO, or assignment to the duties of the PSRO;

(8) Not impose any conditions of membership other than those listed in this section; and

(9) Have a governing body which retains full responsibility and control over the PSRO's duties and functions.

(b) *Purposes and functions.* The primary purpose of the organization shall be to assume responsibility for the duties and functions of a PSRO under part B, title XI of the act. Other activities undertaken by the organization must not conflict with, or give the appearance of conflicting with, the performance of those duties and functions.

(c) *Composition of the governing body.* (1) A majority of the governing body must be member physicians but the governing body may include nonmembers, such as consumers, health care practitioners other than physicians, and other physicians.

(2) No person may be a member of the governing body or hold any office in the PSRO by virtue of being a member, officer, or director in another organization.

(3) Positions for physicians on the governing body may not be reserved for representatives of a particular medical specialty, hospital, or medical society. However, a PSRO may reserve positions to assure:

(i) A proportional ratio of doctors of osteopathy to doctors of medicine;

(ii) Representation from diverse geographical areas; and

(iii) Representation of consumers and health care practitioners other than physicians.

(d) *Election of governing body.* (1) All members shall be informed in a timely manner of nomination and election procedures prior to each election of the governing body.

(2) Each member of the PSRO shall have the opportunity to vote for each governing body member.

(3) The election shall be conducted in a manner which assures maximum participation of individual members without the requirement of their presence. Absentee and mail ballots may be used. However, there may not be voting by proxy, whereby the voting privilege of one member is given with discretion to another member.

(e) *Timing of election.* (1) An election of the governing body shall be conducted within four months from the date the organization is conditionally designated as a PSRO unless HCFA, for good cause shown by the PSRO, extends that period.

(2) The election may be held prior to the date of conditional designation if HCFA has determined that the organization satisfies the requirements contained in paragraph 452.4(a)(4) of this section, and is in substantial compliance with the other requirements contained in this section.

(f) *Conduct of the governing body.* (1) Members of the governing body shall receive timely notice of all meetings of the governing body.

(2) Members of the governing body who are not physicians may not vote on final determinations with respect to the professional conduct of any physician or any act performed by any physician in the exercise of his or her profession.

(3) Governing body members may be removed by:

(i) The governing body for cause; or

(ii) The membership, as may be provided in written policies of the PSRO.

(g) *Committee structure.* If the PSRO establishes committees, it must develop procedures to assure that the committees' membership is representative of the PSRO membership and that the committees offer maximum opportunities for participation by PSRO members.

(h) *Conduct of meetings and availability of records.* (1) General summaries of the records of the meetings of the PSRO's governing body, general membership, and committees shall be made available upon request to the PSRO membership or any other person, except if prohibited by section 1166 of the act and the regulations of part 476 of this chapter.

(2) Except as provided in paragraph (h)(3) of this section, meetings of the PSRO's governing body, general membership, and committees shall be open for observation to all PSRO members, unless prohibited by section 1166 of the act and the regulations of part 476 of this chapter.

(3) Meetings or portions of meetings of the governing body or executive committee may be closed if the governing body provides written notice to

[1] A notice proposing requirements for alternate PSRO's was published on January 27, 1978 (43 FR 3796) under part 471 of this chapter. Final regulations will be codified as § 462.5 of this part.

the entire membership explaining the reasons for closing the meeting. That notice shall be provided prior to the meeting, whenever possible.

(4) Voting by proxy at meetings of the governing body, membership, or committees, whereby the voting privilege of one member is delegated with discretion to another member, is prohibited. Absentee and mail ballots may be used.

(i) *Conflict of interest.* No member of the governing body or of a committee shall be permitted to participate in deliberations regarding, or vote upon:

(A) Matters dealing with health services for which he was directly responsible;

(B) Matters involving an organization in which he or a member of his family (spouse, child, grandchild, parent, or grandparent) has an ownership interest of 5 percent or more; or

(C) Other matters which the individual has reason to believe would involve him in a conflict or possible conflict of interest.

**§ 462.5 [Reserved]**

**§ 462.6 Application requirements for conditional designation.**

(a) *General requirements.* (1) An application for conditional designation under this part shall be submitted at the time and in the manner prescribed by HCFA.

(2) The application must be signed by an individual authorized to act for the organization and to assume for the organization the obligations imposed by the act, the regulations of this subchapter and any additional terms of the grant.

(b) *Initial application.* An organization not previously designated as a PSRO shall include in its application:

(1) A copy of its articles of incorporation and bylaws or, in case of a public agency, a copy of its charter, authorizing statute, ordinance, or executive order, and any internal rules that govern its operation;

(2) A description of its structure that indicates it is organized in a manner that makes available professional competence to review the types of health services for which PSROs have review responsibilities under the act and the regulations of this subchapter;

(3) A list of names and addresses of the members of the governing body and the executive committee (if any) or, in the case of a public agency, the names and addresses of the public officials authorized to carry out PSRO responsibilities;

(4) A plan for the formation of an advisory group, if the applicant is required by section 1162(e) of the act and part 480 of this chapter to establish such a group because a statewide council has not been established in the State;

(5) A list of the organizations that have expressed support for the applicant's designation as a PSRO and evidence of that support;

(6) A formal plan that describes in detail:

(i) The functions that the applicant proposes to carry out and the objectives the applicant intends to attain during the period of conditional designation;

(ii) The manner in which it proposes to carry out such functions and meet such objectives; and

(iii) A timetable for the phased and orderly assumption of all the responsibilities and functions of a PSRO as set forth in part B, title XI of the act and the regulations of this subchapter;

(7) A plan for insuring administrative coordination of the applicant's activities with:

(i) Medicare fiscal intermediaries, and carriers, HCFA Division of Direct Reimbursement, medicaid State agencies, and title V State agencies, as provided in part 463 of this chapter; and

(ii) Health systems agencies and State health planning and development agencies, that serve the PSRO area;

(8) A description of the applicant's proposed data collection and processing system;

(9) A detailed annual budget that identifies the expenses to be incurred by the applicant in carrying out or preparing to carry out its duties and functions as a PSRO. The budget shall include the applicant's best estimate of expenditures by cost category and be submitted in the form prescribed by HCFA;

(10) Evidence that the appropriate clearinghouse has had opportunity to review the PSRO's application in accordance with the provisions of the Office of Management and Budget Circular A-95 (41 FR 2052, January 13, 1976);

(11) Evidence that the applicant has consulted with the medicaid State agency in the development of the plan and has submitted the plan to the Governor of the State for comment as required by § 463.2 of this chapter;

(12) Any other information that HCFA may require; and

(13) If the applicant is seeking to qualify as a priority PSRO under § 462.4 of this part:

(i) Evidence that its membership includes at least 25 percent of all physicians eligible for membership;

(ii) A description of the distribution of physicians in the PSRO area, by county and by specialty;

(iii) A recruitment plan which indicates the number of physicians to be recruited and the recruitment methods that will be used; and

(iv) A copy of a notice of exemption from Federal corporate taxation under section 501(c) of the Internal Revenue Code or, if the request for an exemption is still pending, a copy of that request.

(c) *Renewal applications.* A conditionally designated PSRO shall submit, prior to the expiration of its contract or grant, an application that includes:

(1) Any changes in the information required for an initial application under paragraph (b) of this section; and

(2) A detailed annual budget which identifies the expenses to be incurred by the organization in carrying out its duties and functions as a PSRO for the next grant period. The budget shall include the applicant's best estimate of expenditures by cost category and be submitted in the form prescribed by HCFA; and

(3) Any other information that HCFA may require.

**§ 462.7 [Reserved]**

**§ 462.8 Conditional designation as a PSRO.**

(a) HCFA will award a grant for conditional designation as a PSRO if it determines that the organization is capable of performing the PSRO duties and functions that are necessary so that, by the end of the conditional period, it will be carrying out in a satisfactory manner the activities and functions required for full designation.

(b) HCFA's determination will be based on the following factors:

(1) The extent to which the application demonstrates that the organization is willing and able to perform in an effective, timely, and objective manner and at reasonable cost the PSRO duties and functions required by part B, title XI of the act and the regulations of this subchapter; and

(2) Comments and recommendations submitted by appropriate Governors, medicaid State agencies, title V State agencies, and medicare fiscal agents in accordance with the procedures for evaluation of capability contained in § 463.2 of this chapter.

**§ 462.9 [Reserved]**

**§ 462.10 Limitation on period of conditional designation.**

(a) Conditional designation will not exceed 48 months, unless the Secretary determines that:

(1) The PSRO has been unable to carry out the duties and functions required for full designation for reasons beyond its control; and

(2) The PSRO may be able to qualify for full designation if the conditional period is extended.

(b) Extension of the conditional period will not exceed 24 months.

(c) The period of conditional designation begins on the effective date of the first award document under which the organization was conditionally designated as a PSRO, regardless of whether that award document was a contract or a grant.

**§ 462.11 Duration, renewal, and termination of grants.**

(a) *Grant period.* (1) Grants to a conditionally designated PSRO will usually be for a 12-month period.

(2) Grants to a fully designated PSRO will be for a 12-month period.

(b) *Renewal.* (1) Before the end of each grant period, HCFA will consider the PSRO's renewal application and any other pertinent information and decide whether to renew the grant.

(2) If HCFA determines that a conditionally designated PSRO has made satisfactory progress in carrying out its formal plan and remains qualified for conditional designation, or that a fully designated PSRO has performed in a satisfactory manner and remains qualified for full designation, it will renew the grant for an additional grant period.

(c) *Nonrenewal or termination of conditionally designated PSRO's by HCFA.* (1) If HCFA determines that a conditionally designated PSRO has not made satisfactory progress in carrying out its formal plan or is no longer qualified for conditional designation, it will notify the PSRO of its proposed decision not to renew or to terminate the grant.

(2) The notice to the PSRO will offer the PSRO an opportunity to submit written material or request an informal meeting, in accordance with the procedures for reevaluating the capability of a conditionally designated PSRO set forth in § 463.11 of this chapter.

(3) If a final decision cannot be made before the expiration of the grant period, HCFA may extend the grant period until a final decision is made.

(4) A final decision by HCFA not to renew a grant is effective upon the expiration of the grant.

(5) A final decision by HCFA to terminate the grant will become effective no earlier than 95 days after the date of the notice of the proposed decision to terminate the grant.

(d) *Nonrenewal or termination by a conditionally designated PSRO.* If a conditionally designated PSRO determines that it does not want to have its grant renewed or wants to terminate its grant, it may do so if it provides written notice of its decision to HCFA 90 days prior to the expiration or termination of the grant.

(e) *Nonrenewal or termination of fully designated PSRO's by HCFA.* (1) If HCFA determines that a fully designated PSRO is not substantially complying with or effectively carrying out the provisions of its grant, it may either terminate or not renew the grant. If HCFA decides to take either of these actions, it will provide to the PSRO a notice stating the reasons for its proposed decision and offering the PSRO an opportunity for a formal hearing before the Departmental Grant Appeals Board (the Board).

(2) If the PSRO does not request a hearing, HCFA's decision will become final not earlier than 65 days from the date on the notice of HCFA's proposed decision.

(3) If the PSRO wishes a hearing, it must notify HCFA and the Board within 30 days from the date on the notice of HCFA's proposed decision, in accordance with the provisions of 45 CFR Part 16.6, for submission of cases to the Board.

(4) The hearing will be scheduled as soon as practicable after the PSRO's request and will be conducted under the provisions for formal hearings contained in 45 CFR Part 16.8(b)(2).

(5) The procedures for the hearing will be those contained in 45 CFR Part 16 except that the decision of the Board will be the final administrative action on the matter.

(6) The effective date of the decision by the Board will be set by the Board after consultation with HCFA.

(7) If a final decision cannot be made before the expiration of the grant period, HCFA may extend the grant period until a final decision is made.

(f) *Nonrenewal or termination by a fully designated PSRO.* (1) If a fully designated PSRO determines that it does not want to have its grant renewed, it must notify HCFA not later than 90 days before the expiration of its grant.

(2) A fully designated PSRO may terminate its grant upon 90 days notice to HCFA. HCFA may permit notice of less than 90 days if it determines that an earlier termination date would not unduly interrupt the system of peer review established by the PSRO nor unduly interfere with the effective and efficient administration of the PSRO program.

(g) *Transfer of records.* If a grant to a PSRO is terminated or is not renewed, the PSRO shall transfer to HCFA or a successor PSRO any information (acquired or developed in carrying out PSRO duties and functions) that is requested by HCFA.

**§ 462.12 Use of grant funds.**

(a) Any funds awarded under this part shall be expended solely for carrying out the provisions of the grant in accordance with part B, title XI of the act, the regulations of this subchapter, the terms and conditions of the award, and the applicable cost principles prescribed by 45 CFR Part 74, Subpart Q.

(b) All payments made by HCFA under this part shall be recorded by the PSRO in accounting records separate from the records of all other PSRO funds. With respect to each payment, the PSRO shall account for all amounts paid by presenting or otherwise making available evidence satisfactory to HCFA of expenditures for costs incurred in meeting the requirements of this subchapter.

**§ 462.13 Publications and copyrights.**

(a) PSRO's may publish materials relating to their professional standards review program without prior approval by HCFA if:

(1) Each publication includes a statement that acknowledges the assistance provided by HCFA and indicates that the publication does not necessarily represent the views of the Department of Health, Education, and Welfare; and

(2) Publication of the materials is not prohibited by section 1166 of the act or part 476 of this chapter.

(b) An author or PSRO may copyright a book or other copyrightable material developed under a grant, but HCFA shall have a royalty free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

**§ 462.14 Applicability of 45 CFR Part 74.**

Except as otherwise provided by the regulations of this subchapter or the specific terms of a grant, the relevant provisions of the following subparts of 45 CFR Part 74 shall apply to all grants under this part.

SUBPART

A—General.
B—Cash depositories.
C—Bonding and insurance.
D—Retention and custodial requirements for records.
F—Grant-related income.
H—Standards for grantee and subgrantee financial management systems.
I—Financial reporting requirements.
J—Program reporting requirements.
K—Grant payment requirements.
L—Budget revision procedures.
M—Grant closeout, suspension, and termination.
N—Applications.
O—Property.
P—Procurement standards.
Q—Cost principles.

**§ 462.15 Additional terms and conditions.**

HCFA, at the time of a grant award, may impose additional terms or conditions that it decides are necessary to assure the conservation of grant funds or to carry out the purposes of the grant.

Dated: June 26, 1978.

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

Approved: July 14, 1978.

JOSEPH A. CALIFANO, Jr.,
*Secretary.*

[FR Doc. 78-20226 Filed 7-21-78; 8:45 am]

federal register

MONDAY, JULY 24, 1978
PART IV

# COMMODITY FUTURES TRADING COMMISSION

■

# PROCEDURES FOR EXECUTING SPREAD TRADING ON CONTRACT MARKETS

## Advance Notice of Proposed Rulemaking

[6351-01]

## COMMODITY FUTURES TRADING COMMISSION

[17 CFR Chapter I]

### SPREAD TRADING

**Advance Notice of Proposed Rulemaking**

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is considering adopting a regulation to set forth procedures for executing spread transactions and is soliciting the views of knowledgeable persons and other members of the public on practices that should be covered in any comprehensive regulation. The Commission has posed a number of questions for which comment is specifically sought and has provided preliminary conclusions upon which comment is welcome.

DATE: Comments must be received on or before October 1, 1978.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT:

Patricia Gillman, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-5208.

SUPPLEMENTARY INFORMATION: This request for public comment follows Commission staff study into the practices of spread trading on contract markets. The staff has reviewed a series of administrative decisions (AD's) of its predecessor, the Commodity Exchange Authority ("CEA"), relating to this subject and has examined the spread trading rules adopted by each of the contract markets. It has observed spread trading, interviewed floor brokers and contract market officials and reviewed exchange disciplinary files. The Commission believes that now, before proposing any regulation, it would be helpful to invite broader public participation.

#### DEFINITION OF THE TERM "SPREAD"

The term spread (with its variants "switch," "straddle" and "exchange") is used generally by the industry to describe the purchase of one future against the sale of another future of equal size, where both futures are in the same or related commodities. This purchase and sale constitute the two "legs" of the spread. A significant, although not the only, impetus to spread trading is the expectation that the difference in the prices of these two legs (called the "differential" or "point spread") will either narrow or widen to approach what the market considers to be the appropriate differential at a subsequent point in time. For this reason spread trading appears to serve the constructive purpose of keeping the prices for various months aligned and offers other advantages to hedgers.

#### HOW A SPREAD IS EXECUTED

A spread may be executed in one of two ways: By "trading the differential," or by "legging in" or "legging on." The term "trading the differential" refers to the practice of providing a bid or offer on the size of the differential. Acceptance of this quote results in the simultaneous purchase of 1 month and sale of another at the agreed-upon differential. One trades the differential in the "spread market," a reference not to a physically separate market but rather to a manner of executing both legs simultaneously at a differential.

The terms "legging in" or "legging on" refer to the practice of obtaining the legs of the spread one at a time. A broker legs into an intramarket spread[1] by executing two separate transactions—a buy and a sell. He legs into an intermarket spread[2] by executing a buy (sell) transaction in one market and a sell (buy) in the same or related commodity in a second market.

#### HOW A SPREAD IS PRICED

A broker legging into a spread is actually executing two separate trades. As with all such trades, the price is determined in the market by open outcry. A broker executing a spread by trading the differential determines the differential, but not the price, in the market by open outcry. He and the opposite broker to the transaction then jointly choose the price of one leg, adding or subtracting the differential to obtain the price of the second leg.

Exchange rules on pricing spreads executed in the spread market provide broad discretion. Only one exchange expressly requires that either of these prices bear any relationship to prevailing market prices. The rule of this exchange dictates that one leg of the spread must be pegged to the market price prevailing at the moment of execution. The other nine exchanges permit any combination of prices falling within the daily trading range, with several allowing any price within the permissible daily trading range so long as the price chosen will maintain the current differential in a month that has not traded that day.

[1] With an intramarket spread both legs are trading on the same contract market.

[2] With an intermarket spread each leg is trading on a different contract market.

Commentators on spread trading have explained that some discretion in pricing is necessary because of the limited probability that both legs of the spread can be priced at current market prices. For this probability to occur the size of the spread differential would have to equal the difference between the prices of the two legs in the "regular market."[3] Because the two markets are in a constant state of nonalinement and correction, the spread differential may not be identical to the difference between the two legs at any one point.[4]

A second reason given for some flexibility in pricing spreads is the difficulty in certain cases of determining a prevailing market price for both legs. One example involves use of the spread market to obtain a position in an illiquid deferred month. Price uncertainty because of this illiquidity imposes a risk that tends to discourage trades in distant months. Assumption of a spread position may lessen this risk and thereby may increase liquidity. Once the spread has been executed, however, ascertaining a prevailing market price may prove impossible because of the same illiquidity that prompted the spread in the first place.

#### CEA PRONOUNCEMENTS ON SPREADING

The CEA treated spreads obtained by trading the differential as noncompetitive transactions for which express exchange rules were required under regulation 1.38.[5] Thus, in AD 173 (December 1, 1959) the CEA advised the president of one commodity exchange that spread trades executed at a differential "are permissible under the Commodity Exchange Act if they are made in accordance with

[3] The term "regular market" is used hereafter in contrast to the term "spread market."

[4] The two markets tend to aline because of the opportunity available to the broker in a competitive environment to use the market providing him with the more favorable differential.

[5] CEA regulation 1.38 is identical to Commission regulation 1.38 with the exception of requiring prior Commission approval of exchange rules. Regulation 1.38 provides in pertinent part: (a) *Competitive execution required; exceptions.* All purchases and sales of any commodity for future delivery on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity: *Provided, however,* That this requirement shall not apply to such transactions as are executed noncompetitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the competitive execution of such transactions.

written rules of a contract market which have been submitted to and not disapproved by the Secretary of Agriculture," a restatement of the proviso contained in regulation 1.38(a).

The CEA provided few guidelines on what an exchange spread trading rule should contain. AD 173 discusses two: The rule should provide (1) that the spread "be executed competitively and by open outcry in the pit or ring," and (2) that each side of the transaction be executed "at prices within the daily quotation range for the future, or within certain specified limits if no daily quotation range is established."

The majority of the CEA's pronouncements on spread trading came from a case by case approach and reflect a sustained effort to prevent abuses of the pricing discretion afforded by exchange rules. For example, the CEA would not permit an individual to execute a spread trade as a means of circumventing a limit market. AD 141 (March 30, 1951) discussed a case in which the market was locked at an Office of Price Administration-imposed ceiling. In AD 142 (December 20, 1951) the market was locked at its daily price limit. In each instance parties had sought to execute a spread with one leg priced at the limit and the second (the freely moving leg) priced at a discount under the price at which it was trading in the regular market. The CEA noted that in these cases the spread transaction was being used to obtain "prices or price equivalents which are away from the market." Pricing the second leg to induce the execution of the spread would have to be regarded, said the CEA, "as a form of manipulation and probably also as causing a price 'to be reported, registered, or recorded which is not a true and bona fide price,' in violation of section 4c(c)[6] of the act."

Similarly, the CEA took issue with the practice of pricing offsetting spreads at the highs and lows of the day where the result would be a riskless transaction. In an announcement dated October 30, 1959, and addressed "To Futures Commission Merchants and Floor Brokers" the CEA described the following which it characterized as a "wash" trade: Two spreads (I.E., buy May—sell July, sell May—buy July) had been executed at the same differential. One was priced at the day's highs and the other at the day's lows. Thereafter, the high purchase and low sale were assigned to one account to produce the maximum loss for the day. The low purchase and high sale were assigned to a second account, providing the maximum profit. The CEA observed that "[n]one of this trading was for the purpose of establishing a position in commodity futures or for liquidating a previously established position." It therefore concluded that "[t]he transactions were not bona fide sales or purchases. They were made solely to establish purchases and sales which could be matched against other sales and purchases for a purpose other than bona fide trading in commodity futures. Such transactions are 'wash' sales and as such are prohibited by section 4c of the Commodity Exchange Act."

In its October 30, 1959 announcement, the CEA also stated that "[t]here are other violative features surrounding the transaction described above." One of these, the coupling of separate orders to create a spread order, received separate treatment in AD 173, 1 month later. There the CEA advised that coupling separate orders to create a spread order was unlawfully noncompetitive. The AD explained that its view was intended to assure each customer "that the price at which his order in a particular future is filled is based entirely on competitive trading in that future and not tied to other trades or other futures in which he has no interest." As noted above, it is not often possible for both legs of a spread to be priced at the market price prevailing for each leg in the regular market. As a result, a party whose order becomes one half of a spread order may not obtain a fill as good as, or may obtain a fill better than, he would have received by a separate execution of his order.

It is apparent from the foregoing that the CEA did not intend to permit the choosing of prices within the daily trading range to be used to eliminate all price risk. For example, in a review of spread trading in one contract market in 1968, the CEA found numerous instances of spreads being priced at the highs or lows of the day in connection with the kind of wash trading discussed above. The CEA drew two conclusions from this conduct: (1) That the purpose of pricing both legs of the spread away from the market price prevailing at the time of execution was solely to permit traders to obtain a profit or loss without taking a position in the market, and (2) that choosing prices for this reason violated section 4c(a)(C) of the act. (As noted above, this section prohibits the execution of any transaction "used to cause any price to be reported, registered or recorded which is not a true and bona fide price.") Accordingly, the CEA disapproved the Exchange's spread trading rule which had permitted pricing within the daily trading range. Thereafter the exchange submitted a rule providing that at least one leg of the spread must be priced "at the market price prevailing at the time of the trade"—a rule still in effect.

### Current Practices

From its investigations the Commission is aware that, on the majority of contract markets, spread prices, as well as spread differentials, are customarily set immediately upon execution and reflect the prices prevailing at the time of execution. Nevertheless, on certain markets the pricing of both legs of the spread away from the market—often at the day's highs or lows—has become prevalent. Also, notwithstanding rules to the contrary, some markets have been permitting a spread order to be created by joining a buy and sell order from separate unrelated accounts.

In preparation for drafting a regulation on spreads obtained by trading the differential, the Commission seeks comment on the following questions:

I. What purposes (economic or otherwise) will be served by permitting discretion in the pricing of both legs of a spread executed at a differential? In each example offered, how does pricing discretion for both legs further the stated purpose? What benefits or disadvantages would follow from requiring brokers to price the two legs immediately upon execution, pegging one leg to a price then prevailing?

These questions arise from the practice of delaying the pricing of both legs of the spread and thereby expanding the range of permissible prices:

1. The opportunity to choose prices appears to increase the opportunity for prearranging and accommodating trades. The Commission staff is now investigating a case in which a broker established an artificially low price by executing a regular trade substantially below the market. Later he filled a large volume spread order which he priced using the artificially low trade he had previously executed. The opposite broker for his low trade took the other side of the large spread transaction, indicating that both the low trade and the spread transaction were probably prearranged. In a second suspected case of prearrangement, this one already referred to the exchange for investigation, a broker crossed the spread orders of two customers of the same futures commission merchant. Two months later both customers entered the market with liquidating orders which were again crossed, with one leg pegged to a price not shown in the time and sales record for that day.

[6] Now section 4c(a)(C), 7 U.S.C. 6c(a)(C) (1976).

Plainly, the apparent prearrangement in both these cases was directly tied to the chance to set spread prices.

2. The opportunity to choose prices appears to increase the incentive for traders to misuse the futures markets by executing riskless transactions wherein they obtain desired profits or loss without having taken a position in the market. To illustrate, instances have come to light in which a broker will execute two spreads simultaneously, e.g. a May to September and a September to December. The first spread is priced at the day's highs (or lows) and the second at the day's lows (or highs). The two September trades cancel out, producing the desired initial loss (the usual reason for undertaking such a plan). If used toward the end of the trading session when the day's high and low are known, this trading strategy enables the customer to obtain any size loss. For example, if the customer is seeking a $5,000 loss and the range between the high and the low for September creates a $500 loss per spread, he need only enter an order for 10 May to September and 10 September to December spreads. In obtaining these executions he has accomplished his purpose without taking a position in September—a wash sale under the CEA interpretation—and has been able to determine the outcome with near-mathematical certainty.

3. The opportunity to price away from the market appears to discourage the alinement between the spread and regular markets to the detriment of the public. When 1 month reaches the limit and ceases trading, it is not unusual for persons wanting to liquidate a long (or short) position in the month to offer a spread having a differential that is larger (or smaller) than the difference between the current market price for each leg in the regular market.

In one case reviewed by the Commission staff, a member of the general public sought a spread at the market, on the assumption that the two markets (spread and regular) would be in general alinement. Because (unknown to him) he was obtaining a long position in a month locked up the limit, he received the distorted and costly differential being offered by traders who were locked in the market. It is debatable whether the distortion of spread differentials should be permitted as a means of enabling traders to escape a market locked at the limit price. As the CEA noted in AD 142, limits are "fixed voluntarily" by exchanges and may be modified or abolished entirely at their discretion.

4. The ability to price spreads at other than the prevailing market price appears to compound the difficulty of reconstructing trades. Currently, on certain exchanges there is almost no way to pinpoint the time at which a spread is executed. Several do not require spreads to be timed at the moment of execution. At least one which uses a bracketing system for regular trades does not require brokers to record the bracket in which a spread is transacted. Reliance on a spread times and sales sheet may prove of little benefit where the same differential has traded several times during the day. The lack of volume data on certain times and sales sheets also diminishes the usefulness of this document. The pricing of spreads at the prices prevailing at the moment of execution and the immediate give up of these prices increases immeasurably the opportunity for an accurate reconstruction.

The Commission questions the rationale for the existing flexibility in pricing in light of the fact that a person who elects to leg in, rather than use the spread market, has no such pricing discretion. Comparing trading the differential to legging in with respect to this pricing flexibility seems appropriate even though legging into a spread is riskier than trading the differential and therefore is not a suitable vehicle for everyone. Certain of the brokers interviewed stated that, notwithstanding the risk, the knowledge that a broker may leg in if he finds the prices in the regular market more attractive is a definite force keeping the two markets in line. One Exchange has dismissed the option of legging in as not suited to its fast-paced market and has claimed that its brokers never leg into a spread. However, this market also has a significantly large percentage of its spreads executed at the highs and lows of the day, raising the question whether its flexible pricing policy may be responsible for the limited interest in legging into spread positions.

From its interviews and investigations the Commission is aware that several groups will be interested in maintaining the current discretionary pricing. Among these are the following:

1. Brokers executing scratch trades. On at least two exchanges the flexible pricing of spreads has been used by brokers to increase the number of "scratch" trades or "pass outs" which they are able to accumulate in 1 day. A "scratch" trade (or "pass out") is a day trade executed by a broker for his own account, in which a purchase and sale, although filled at different times, are at the same price. Until recently brokers were encouraged to maximize the opportunities to execute scratch trades because their fixed clearing rate was substantially less than the clearing rate for other day trades. It is an open question whether this incentive will remain with the new system of negotiated rates required since early March 1978. Comments are solicited on this point. Assuming that the opportunity to scratch trade encourages greater market participation by "locals" (brokers trading for their own accounts), the Commission also requests suggestions on other means of encouraging such liquidity.

2. Hedgers. One large trade source explained to Commission staff members that he often uses the spread market to "roll over" a hedge. Upon executing a cash transaction in a forward contract, he will place an order for a regular trade in the most active month then trading. At the end of the day he will execute a spread to close out the near month position and establish his hedge in the forward month. This hedger insists that for ease of bookkeeping he wishes to price the near leg of the spread at the same price as his initial position. In this way he avoids what he considers to be an artificial profit or loss. Comments on this illustration are requested as are other examples of hedgers relying on the existing discretionary spread pricing system.

3. Brokers in hectic markets. Certain traders have stated that hectic market conditions make it difficult for them to price spreads immediately. The Commission is interested in obtaining additional information on circumstances that could cause a delay in the immediate pricing of the legs of the spread.

II. Do any reasons exist why a broker should be permitted to execute as a spread a transaction in which both legs are not for the same or related accounts?

The CEA in AD 173, discussed above, answered this question in the negative. The CEA considered the joining of separate orders into one spread order noncompetitive because one party could not be assured of obtaining as good an execution as part of a spread as he might have with a regular trade. Nine of the ten exchanges designated as contract markets have rules prohibiting such a practice. However, it seems that the rules are interpreted by exchange members and compliance staffs to permit various exceptions.

If the rule against joining orders of unrelated accounts is applied, without exception, to all markets, at least one group may lose certain alleged advantages. Having executed an order in the wrong month, brokers have been known to create a spread to liquidate this position and establish the customer in the correct month. One reason advanced for relying on a spread in this case is to avoid having to provide the customer with a monetary adjustment which is subject to exchange

review. The leg belonging to the customer is priced to reflect the prevailing market price at the time the transaction should have taken place and any change in price is absorbed by the broker in liquidating his leg of the spread. The Commission welcomes comments on this point.

III. Assuming that the Commission adopts a rule expressly requiring one leg of the spread to be priced to the current market, how should the term "prevailing market price" be defined?

In pricing one leg to the market the broker should be required to use an easily verifiable price. One suggestion is the last sale price. However, if the last sale took place substantially before the spread being priced, it may no longer reflect the market. An alternative in this situation is to look at the range of bids and offers existing since the last sale. Comments on these points and other suggestions are solicited.

IV. Assuming, again, that the Commission requires one leg of the spread to be priced at the current market, should the Commission specify by regulation which leg is to be priced to the prevailing market price?

Since the price determined by an active (as distinguished from an illiquid) market is more likely to give an accurate portrait of the present value of the future, the more actively traded leg of the spread should probably be priced to the market. The Commission seeks comments on the difficulties anticipated in requiring the more actively traded leg to be priced to the prevailing market price. The Commission is also considering including in the proposed rule a requirement that where a spread contains one leg locked the limit, this leg must be priced at the limit and the second (freely moving) leg must be priced at the market. In this way the alinement of the spread and regular markets is not allowed to become distorted by persons seeking to liquidate their position in the locked limit month.

The foregoing questions and explanatory material are not intended to restrict or limit comment on the issues presented. The Commission seeks comment in any area that interested persons believe would be appropriate, in as much detail as the commentator is willing to provide.

Issued in Washington, D.C., on this 18th day of July 1978.

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

[FR Doc. 78-20406 Filed 7-21-78; 8:45 am]

federal register

MONDAY, JULY 24, 1978
PART V

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

■

# 1978–79 EARLY HUNTING SEASONS

## Final Regulations Frameworks for Certain Migratory Game Birds in the U.S.

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 20—MIGRATORY BIRD HUNTING

## Final Regulations Frameworks for 1978–79 Early Hunting Seasons on Certain Migratory Game Birds in the United States.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e. the outer limits for dates and times when shooting may begin and end and the number of birds which may be taken and possessed) for early season migratory bird hunting regulations from which States may select season dates and daily bag and possession limits for the 1978–79 season. These seasons may open prior to September 30, 1978, and apply to mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, gallinules, teal (September only), sea ducks (Atlantic flyway only), sandhill cranes in North Dakota and South Dakota, and extended falconry seasons.

DATES: Effective on July 24, 1978. Season selections due from the States by July 26, 1978.

ADDRESS: Season selections from States to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

John P. Rogers, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, D.C. 20240, telephone 202-254-3207.

SUPPLEMENTARY INFORMATION: On February 14, 1978, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the FEDERAL REGISTER (43 FR 6275) proposals to amend 50 CFR part 20, with a comment period ending May 16, 1978. That document dealt with establishment of seasons, limits, and shooting hours for migratory game birds under §§ 20.101 through 20.107 of subpart K. On May 25, 1978, the Service published for public comment in the FEDERAL REGISTER (43 FR 22421) a second document in the series consisting of supplemental proposed rulemaking dealing specifically with a number of supplemental proposals and minor clarifications arising from comments received on the initial proposals, or from new information. Comment periods on the second document end as follows: June 21, 1978, for regulations proposed for Alaska, Puerto Rico, and the Virgin Islands; July 13, 1978, for proposed early season regulations; and August 21, 1978, for late season proposals.

A public hearing was held in Washington, D.C., on June 21, 1978, as announced in the FEDERAL REGISTER on February 14, 1978 (43 FR 6275) and May 25, 1978 (43 FR 22421) to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, and sandhill cranes. Proposed hunting regulations for these species were discussed plus those for common snipe, rails, and gallinules; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons in the Mississippi and central flyways; special sea duck seasons in the atlantic flyway; and falconry seasons. Statements or comments were invited.

On June 28, 1978, the Service also published for public comment in the FEDERAL REGISTER (43 FR 28012) a third document in the series consisting of supplemental proposed rulemaking dealing specifically with proposed frameworks for early season migratory bird hunting regulations from which, when finalized, States may select season dates, shooting hours, and daily bag and possession limits for the 1978–79 season. On June 30, 1978, the Service published in the FEDERAL REGISTER (43 FR 28499) a fourth document in the series consisting of final rulemaking dealing specifically with final frameworks from which wildlife conservation agency officials in Alaska, Puerto Rico, and the Virgin Islands could select season dates for hunting certain migratory birds in Alaska, Puerto Rico, and the Virgin Islands during the 1978–79 season.

The present final rulemaking is the fifth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with final frameworks for early season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1978–79 season. These seasons may open prior to September 30, 1978, and apply to mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, gallinules, teal (September only), sea ducks (Atlantic flyway only), sandhill cranes in North Dakota and South Dakota, and extended falconry seasons.

### REVIEW OF PUBLIC COMMENTS AND THE SERVICE'S RESPONSE

Various public comments on the proposed early season regulations have been reviewed and responded to during the regulatory development period. The Service replied to public comments on regulations proposed in the FEDERAL REGISTER (43 FR 6275) dated February 14, 1978, in the FEDERAL REGISTER (43 FR 22421) dated May 25, 1978. In the June 28, 1978, FEDERAL REGISTER (43 FR 28012) the Service responded to recommendations received at the public hearing held in Washington, D.C., on June 21, 1978, and to public comments subsequent to publication of the May 25 document.

Three additional comments were received after June 28, 1978. Two, both from State conservation agencies, endorsed the proposed early season frameworks. The other, from Tennessee, reiterated the interest and desire of certain States in the southern part of the Mississippi flyway to allow the taking of two wood ducks per day during the 9-day September teal season. The Service notes this continued interest but has determined that such a change in September teal season regulations should not be made at this time pending further evaluation. As noted at page 22423 in the May 25, 1978, FEDERAL REGISTER, an alternative approach, used last year to provide additional harvest opportunity in southern areas for wood ducks is proposed again for this year.

Comments received are available for public inspection during normal business hours at the Service's office in Room 525A, Matomic Building, 1717 H Street NW., Washington, D.C.

### STEEL SHOT REGULATIONS

Nontoxic shot requirements in some areas apply to waterfowl regulations frameworks being finalized here. On February 28, 1978, the Service published in the FEDERAL REGISTER (43 FR 8144) final regulations regarding zones in all flyways in which shot shells loaded with steel shot will be required for waterfowl hunting in seasons commencing in 1978. The intended effect of establishing these steel shot regulations is to reduce the number of waterfowl deaths caused by ingesting spent lead pellets. On June 30, 1978, the Service published in the FEDERAL REGISTER (43 FR 28501) an amendment modifying descriptions of some of the zones published on February 28 in order to reduce the size of zones in New York and Texas, and permit shooting tests to be conducted within zones in Illinois and California. On June 29, 1978, the Service published in

the FEDERAL REGISTER (43 FR 28205) a final rule extending the 1977 ruling (42 FR 39106; August 2, 1977) allowing possession of shells loaded with toxic shot in gages other than 12 gage while hunting waterfowl in nontoxic shot zones during the 1978–79 season. The extension was allowed because supplies of shells in gages other than 12 gage will not be available in 1978. The regulations appear under 50 CFR, §§ 20.21 and 20.108, and will also be summarized in the Service's regulations leaflets to be published late this summer.

### NEPA CONSIDERATION

The Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54) was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the FEDERAL REGISTER on June 13, 1975 (40 FR 25241). An environmental assessment on September dove hunting (42 FR 37552; July 22, 1977) supplemented the discussion on dove hunting in FES 75-54. Another assessment enlarged upon the FES discussion of shooting hours. Several other environmental assessments or statements addressed species or regulatory subjects peculiar to late season regulations and implementation of the nontoxic shot program. Copies of these documents are available from the Service.

### ENDANGERED SPECIES ACT CONSIDERATION

Section 7 of this act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act," and "by taking such action necessary to insure that actions authorized, funded, or carried out * * * do not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical."

Consequently, the Service reviewed all migratory bird regulations being contemplated this year for the early seasons (shooting hours, sea ducks, September teal seasons (including the extra teal option during regular seasons), falconry, sandhill cranes in North Dakota, gallinules, rails, snipe, woodcock, band-tailed pigeons, mourning doves, white-winged doves, and mourning doves in Hawaii). As a result of intra-Service section 7 consultation, the Director concluded in a biological opinion that the regulatory frameworks proposed for the 1978–79 early hunting seasons would not jeopardize the continued existence of any species designated as endangered or threatened under the act or adversely modify their critical habitats or habitats that may be determined as critical in the future. Likewise, the biological opinion concluded that the proposed regulations are not contrary to, and do not undermine, the Service's obligation to conserve endangered and threatened species. As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior.

### REGULATIONS PROMULGATION

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemaking was published on February 14, May 25, and June 28, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select their season dates, shooting hours, and bag limits; to communicate those selections to the Service, and finally to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Accordingly, the Service prescribes the final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and special closures, from which State conservation agency officials may select open season dates. Upon receipt of season selections from State officials, the Service will publish in the FEDERAL REGISTER final rulemaking amending certain sections of subpart K of 50 CFR Part 20 to reflect seasons, limits and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands for the 1978–79 season.

### AUTHORSHIP

The primary author of this final rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

### FINAL REGULATIONS FRAMEWORKS FOR 1978–79 EARLY HUNTING SEASONS ON CERTAIN MIGRATORY GAME BIRDS

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks which prescribe season lengths, limits, shooting hours, and outside dates within which States may select seasons for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and gallinules; for September teal seasons; for sea ducks in certain defined areas of the Atlantic flyway; sandhill cranes in designated portions of North Dakota and South Dakota; and special falconry regulations. For the guidance of State conservation agencies, these frameworks are summarized below.

NOTE.—Any State desiring its season on gallinules, woodcock, snipe, cranes, or extended falconry to open in September must make its selection no later than July 26, 1978. Those States which desire their gallinule, woodcock, snipe, crane, or extended falconry season to open after September may make their selection at the time they select their regular waterfowl season.

Those Atlantic flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selections no later than July 26, 1978. Those Atlantic flyway coastal States which desire their seasons on sea ducks in certain defined areas to open after September may make their selections at the time they select their regular waterfowl seasons.

### MOURNING DOVES

Between September 1, 1978, and January 15, 1979, except as noted, States may select hunting seasons and bag limits as follows:

Eastern management unit (all States east of the Mississippi River and Louisiana):

1. Shooting hours [1] Between 12 o'clock noon and sunset daily;

2. Daily bag and possession limits not to exceed 12 and 24, respectively, in all States;

3. Hunting seasons of not more than 70 half-days which may run consecutively or be split into not more than three periods.

4. As as option to the above, Alabama, Georgia, Louisiana, and Mississippi may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

[1] The hours noted here and elsewhere also apply to hawking (taking by falconry).

*Alabama*—The south zone consists of the area south of U.S. Highway 84 running east to the Covington County line, and including Coffee, Covington, Dale, Geneva, Henry, and Houston Counties. The north zone consists of the remainder of Alabama.

*Georgia*—U.S. Highway 280 east to Abbeville, thence along Ocmulgee and Altamaha Rivers to the Atlantic Ocean.

*Louisiana*—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell, and Interstate Highway 10 from Slidell to the Mississippi State line.

*Mississippi*—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 half-days which may run consecutively or be split into not more than three periods.

C. The hunting seasons in the south zones of these States may commence no earlier than September 20, 1978.

Central management unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming):

1. Shooting hours between one-half hour before sunrise and sunset daily in all States;

2. Daily bag and possession limits not to exceed 10 and 20, respectively, in all States;

3. Hunting seasons in all States of not more than 60 full days which may run consecutively or be split into not more than three periods.

4. Texas may select hunting seasons for each of two previously established zones subject to the following conditions:

A. The hunting season may be split into not more than two periods.

B. The north zone may have a season of not more than 60 days between September 1, 1978, and January 22, 1979.

C. The south zone may have a season of not more than 60 days between September 20, 1978, and January 22, 1979. In that portion of Texas where white-winged dove hunting is allowed, the mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining 56 days must be within the September 20, 1978–January 22, 1979, period.

5. In New Mexico, daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, singly or in the aggregate of the two species.

Western management unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington):

1. Shooting hours between one-half hour before sunrise and sunset daily;

2. Daily bag and possession limits not to exceed 10 and 20, respectively;

3. Hunting seasons of not more than 50 full days which may run consecutively or be split into not more than three periods.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, singly or in the aggregate of the two species.

### White-Winged Doves

Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1, 1978, and December 31, 1978, and daily bag and possession limits as stipulated below. Shooting hours between one-half hour before sunrise and sunset may be selected.

Arizona may select a hunting season for the entire State of not more than 25 consecutive days, to run concurrently with the first period of the split mourning dove season. The daily bag and possession limits may not exceed 10 white-winged doves.

California may select a hunting season for the counties of Imperial, Riverside, and San Bernardino only. The daily bag and possession limits may not exceed 10 and 20 white-winged and mourning doves, respectively, singly or in the aggregate of the two species. Dates, limits, and hours are to conform with those for mourning doves.

Nevada may select a hunting season for the counties of Clark and Nye only. The daily bag and possession limits may not exceed 10 and 20 white-winged and mourning doves, respectively, singly or in the aggregate of the two species. Dates, limits, and hours are to conform with those for mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 10 and 20 white-winged and mourning doves, respectively, singly or in the aggregate of the two species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for that portion of the State where the species occurs. The daily bag and possession limits may not exceed 10 and 20 white-winged doves, respectively. The reason may be split within the overall time frame.

### Band-Tailed Pigeons

West coast States (California, Oregon, and Washington). These States may select hunting seasons not to exceed 30 consecutive days between September 1, 1978, and January 15, 1979. Shooting hours between one-half hour before sunrise and sunset may be selected. The daily bag and possession limits may not exceed 8 band-tailed pigeons.

California may zone by selecting hunting seasons of 30 consecutive days for each of the following two zones:

1. In the counties of Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

2. The remainder of the State.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1978. Shooting hours between one-half hour before sunrise and sunset may be selected. The daily bag and possession limits may not exceed 5 and 10, respectively. *Provided*, That each hunter must have been issued and carry on his person while hunting band-tailed pigeons a valid band-tailed pigeon hunting permit issued by the respective State conservation agency, and such permit will be valid in that State only; and *Provided further*, That this season shall be open only in the areas delineated by the respective States in their hunting regulations.

New Mexico may divide its State into two zones, along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1, 1978, and November 30, 1978, in the north zone, and October 1, 1978, and November 30, 1978, in the south zone, hunting seasons not to exceed 20 consecutive days in each zone may be selected by New Mexico.

### Rails (Clapper, King, Sora, and Virginia)

The States included herein may select seasons between September 1, 1978, and January 20, 1979, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days.

Shooting hours between one-half hour before sunrise and sunset in all States for all species may be selected.

#### Clapper and King Rails

1. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

2. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virgin-

ia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

3. The season will remain closed on clapper and king rails in all other States.

SORA AND VIRGINIA RAILS

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, are prescribed in States in the Atlantic, Mississippi, and central flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific flyway.[2,3]

No hunting season is prescribed for rails in the remainder of the Pacific flyway.

WOODCOCK

States in the Atlantic, Mississippi, and central flyways may select hunting seasons between September 1, 1978, and February 28, 1979, of not more than 65 days, with daily bag and possession limits of 5 and 10, respectively, *Provided*, That in the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end by January 31. Shooting hours may be selected between one-half hour before sunrise and sunset. Any State may split its woodcock season without penalty.

New Jersey may select experimental woodcock seasons by north and south zones divided by State Highway 70. Seasons in each zone may not exceed 55 days.

COMMON SNIPE

States in the Atlantic, Mississippi, and central flyways may select hunting seasons between September 1, 1978, and February 28, 1979, not to exceed 107 days, except that in the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1978, and February 28, 1979, and not to exceed 93 days, may be selected in the Pacific flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific flyway, must select their snipe seasons to run concurrently with their regular duck seasons. In these Pacific flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Shooting hours between one-half hour before sunrise and sunset may be selected. Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season without penalty.

States or portions thereof in the three eastern flyways may defer selections of snipe seasons at this time and make the selections in August when they select waterfowl seasons. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

SANDHILL CRANES

North Dalota and South Dakota may select sandhill crane seasons not to exceed 5 consecutive days during the period September 1 through 11, 1978, in certain designated areas.

In North Dakota, the season is confined to Kidder, Stutsman, Benson, Emmons, Pierce, McLean, Sheridan, and Burleigh Counties. In South Dakota the season is confined to Campbell, Walworth, Potter, Dewey, and Corson Counties. Shooting hours may be selected between one-half hour before sunrise and sunset. In both States, the bag limit is three birds daily and the possession limit is six birds. Each person participating in the season must obtain and carry in his possession while hunting a Federal sandhill crane hunting permit.

GALLINULES

States in the Atlantic, Mississippi, and central flyways may select hunting seasons between September 1, 1978, and January 20, 1979, of not more than 70 days. States in the Pacific flyway must select their hunting seasons within the waterfowl seasons. States may split their seasons without penalty. Shooting hours between one-half hour before sunrise and sunset may be selected. The daily bag and possession limits may not exceed 15 and 30, respectively.

States may select their gallinule seasons at the time they select their waterfowl seasons. If the selection is deferred, daily bag and possession limits will remain the same, but shooting hours must conform with those for waterfowl, and the season length will be the the same as that for waterfowl, or 70 days, whichever is the shorter period. Exception: A gallinule season selected by any State in the Pacific flyway may not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and gallinules, singly or in the aggregate of the two species.

SCOTER, EIDER, AND OLDSQUAW DUCKS (ATLANTIC FLYWAY)

A maximum season of 107 days for taking scoter, eider, and oldsquaw ducks may be selected between September 16, 1978, and January 20, 1979, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of the State of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in the States of New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in the States of Delaware, Maryland, North Carolina, and Virginia; Provided, That any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic flyway, sea ducks may be taken only during the regular open season for ducks.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic flyway, States may set, in addition to the regular limits, a daily limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Shooting hours between one-half hour before sunrise until sunset daily may be selected.

Any State desiring its sea duck season to open in September must make its selection no later than July 26, 1978. Those States desiring their sea duck season to open after September may make their selection at the

[2]The central flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

[3]The Pacific flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof.

time they select their waterfowl season.

In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or special falconry season) exceed 107 days for any geographical area.

### September Teal Season

Between September 1 and September 30, 1978, an open season on all species of teal may be selected by the States of Alabama, Arkansas, Colorado (central flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (central flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The season may not exceed 9 consecutive days with a bag limit of four teal daily and eight in possession. States must advise the Service of season dates and special provisions to protect nontarget species by July 26, 1978.

In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup, and goldeneye season, or falconry season) exceed 107 days for any geographical area.

### Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

1. Seasons must fall within the regular season framework dates and, if offered, other special season framework dates for hunting.

2. Season lengths for all permitted methods of hunting within a given area may not exceed 107 days for any species.

3. Hunting hours shall not exceed one-half hour before sunrise to sunset.

4. Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed three and six birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

5. Each State selecting extended seasons shall report to the Service the results of the special falconry season by March 15, 1979.

6. Each State selecting the special season must inform the Service of the season dates and publish said regulations.

General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

### Economic Impact Review

Note.—The Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 19, 1978.

Lynn A. Greenwalt,
*Director,*
*U.S. Fish and Wildlife Service.*

[FR Doc. 78-20446 Filed 7-21-78; 8:45 am]

federal register

MONDAY, JULY 24, 1978
PART VI

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Assistant Secretary for Housing—Federal Housing Commissioner

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## LOCAL RENT CONTROL

### Tenant Comments on Determinations

[4210-01]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 403]

[Docket No. R-78-559]

### LOCAL RENT CONTROL

### Tenant Comments

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is considering amending the regulations pertaining to local rent control to provide, in the case of unsubsidized projects, for tenant comments in the Department's preemption determinations as to the income level necessary to maintain and operate adequately the project. The proposed rule sets forth new procedures for mortgagors of unsubsidized projects to follow when requesting HUD's preemption of local rent control regulations.

DATES: Written comments and suggestions will be received until August 23, 1978. HUD will make such modifications as it deems appropriate in the final regulations.

ADDRESS: Comments should be submitted to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

James J. Tahash, Director, Insured Project Mortgage Division, Office of Loan Management, Office of Insured and Direct Loan Programs, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-5757.

SUPPLEMENTARY INFORMATION: The proposed rule sets forth new procedures for mortgagors of unsubsidized projects to follow when requesting HUD's preemption of local rent control regulation. The proposed rule provides for tenant comments in the Department's preemption determination as to the income level necessary to maintain and operate adequately the project which includes sufficient funds to meet the financial obligations under the mortgage.

These procedures include: (1) Notification to the tenants by the mortgagor of its intent to request preemption approval by HUD; (2) an opportunity for tenants to examine materials supporting the mortgagor's proposed preemption request and to make written comments thereon to the mortgagor and to HUD; and (3) after HUD has considered all submitted material and made a determination, notification to the tenants by mortgagor of the reasons for approval or disapproval.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The finding of inapplicability in accordance with HUD's environmental procedures handbook (HUD Handbook 1390.1) is available for inspection at the Office of the Rules Docket Clerk, at the above address.

Accordingly, it is proposed that Part 403, of Chapter IV of 24 CFR be amended as follows:

1. The table of contents is amended as follows:

#### Subpart B—Unsubsidized Insured Projects

Sec.
403.5 Rental Charges.
403.6 Initiation.
403.7 Notice to tenants.
403.8 Materials to be submitted to HUD in support of preemption request.
403.9 Request for preemption.
403.10 HUD procedures.
403.11 Notification of action on preemption requests.
403.12 Preemption of Prospective Term of Lease.

#### Subpart C—Subsidized Insured Projects

Sections 403.8 Applicability, 403.9 Rental charges, and 403.10 Procedures are renumbered as follows:

403.20 Applicability.
403.21 Rental charges.
403.22 Procedures.

#### Subpart D—HUD-Owned Projects

Section 403.12 Rental charges and § 403.13 Procedures are renumbered as follows:

403.30 Rental charges.
403.31 Procedures.

2. Subpart B—Unsubsidized Insured Projects is amended as follows:

**§ 403.5 Rental Charges.**

The Department will generally not interfere in the regulation of rents by a rent control board or agency constituted under State or local laws (hereinafter referred to as board) for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents, together with any Board regulations which require the mortgagor to offer a lease for a term in excess of one year, for such a project when the Department determines that the delay or decision of a board, prevents the mortgagor from achieving a level of residential income necessary to maintain and operate adequately the project which includes sufficient funds to meet the financial obligations under the mortgage.

* * * * *

Section 403.6 is recaptioned and amended to read as follows:

**§ 403.6 Initiation.**

When a mortgagor determines that the permitted increase in rents as prescribed by the board will not provide a rent level necessary to maintain and operate adequately the project, and the mortgagor elects to request preemption under this subpart, it shall:

(a) File its application for whatever relief or redetermination is permitted under the State or local law;

(b) Notify the tenants in accordance with § 403.7 of this subpart, the appropriate HUD office pursuant to 403.8, and the board of its intention to file a request for preemption of local rent control regulation pursuant to the provisions of regulations in this subpart if either the board's written decision is unacceptable to the mortgagor or no written decision is received from the board within 30 days of the mortgagor's request under (a) above.

* * * * *

**§ 403.7 Notice to tenants.**

At least 30 days before filing a formal request to HUD for preemption of local rent control regulations, the mortgagor shall notify the tenants of its intention to so file. Copies of the Notice shall be:

(a) Delivered directly or by mail to each tenant; and

(b) Posted in at least 3 conspicuous places within each structure or building in which the affected dwelling units are located.

The notice shall contain the addresses where the materials which constitute a complete submission as required by 403.8 in support of the proposed preemption request are to be made available to tenants as well as the required information in the following format or equivalent thereto:

NOTICE TO TENANTS OF INTENTION TO FILE A REQUEST TO HUD FOR PREEMPTION OF LOCAL RENT CONTROL REGULATIONS

Date of Notice ————————

Take notice that on (date) we requested the (Name) board to review our application for redetermination of permitted rents.

Take further notice that on (date), if the (Name) board fails to approve an income level necessary to maintain and operate adequately the project, or to act upon our request, we plan to file a request for preemption of local rent control regulations for (name of apartment complex) with the

United States Department of Housing and Urban Development (HUD). The requested preemption action is supported by the following:

(1) HUD approved Gross Potential Income: Year approved. ——— $———.

(2) Current Total Residential Rents Allowed by Local Rent Control Board, $———.

(3) Projected Total Annual Residential Rents Allowable Under Local Board Regulations 6 Months After Date of this Notice, $———.

(4) Income Required to Operate Project as Supported by Profit and Loss Statement Being Submitted to HUD, $———.

Copies of the materials that we intend to submit to HUD in support of our request will be available during normal business hours at (address) for a period of 30 days from the date of this notice for inspection and copying by tenants of (name of apartment complex) and if the tenants wish, legal or other representatives duly authorized in writing to act for one or more of the tenants.

During a period of 30 days from the date of this notice, tenants of (name of apartment complex) may submit written comments on the proposed preemption request to us at (address). Tenant representatives may assist tenants in preparing those comments. The inspection and comment period will be extended as necessary to assure a 30-day comment period on a complete submission and to allow at least 5 days to comment on any written decision made by the Board if received by the mortgagor on or before the expiration of the thirty day period and which was not available to the tenants during the first 25 days of the 30-day period. These comments will be transmitted to HUD, along with our evaluation of them and our preemption request. You may also send a copy of your comments directly to HUD at the following address: United States Department of Housing and Urban Development (address of local HUD field office with jurisdiction over preemption of rents for the project) Attention: Director, Housing Re: Project No. (Name of Apartment Complex). HUD will approve or disapprove the preemption request in whole or in part upon reviewing the materials and comments. When HUD advises us in writing of its decision on our request, you will be notified at least 30 days before any change in the rental structure is put into effect, in accordance with the terms of existing leases. (Name of mortgagor or managing agent.)

The mortgagor shall comply with all representations made in this Notice.

* * * * *

A new § 403.8 is added as follows:

**§ 403.8 Materials to be submitted to HUD in Support of Request for Preemption.**

(a) After posting or delivery of the notice as required by § 403.7, the mortgagor shall immediately send HUD notification of its intention to file a preemption request, to include:

(1) The written notice to the tenants, which will state the date of its posting and/or distribution.

(2) An annual Statement of Profit and Loss, on a form prescribed by the Commissioner, audited by an independent public accountant and covering the most recently ended accounting year, and an unaudited accrual Profit and Loss Statement on a form prescribed by the Commissioner for the intervening period since the date of the last annual statement, if more than four months have elapsed since that date, with the mortgagor's certification as to its accuracy.

(3) A certified statement which provides a separate breakdown for the percentage of vacancies for the present and previous year.

(4) A certified statement which provides a separate breakdown of the actual rent loss due to nonpayment of rent for the past 2 years.

(5) A certified statement which provides a separate breakdown of rent loss due to tenant turnover for the past 2 years.

(6) A certified statement covering known approved rate or cost increases not yet experienced by the project which can be documented:

(i) Tax rates or appraisals

(ii) Utility rates

(iii) Contracts for employees or services

(iv) Insurance

(7) A certified statement covering known decreases of rates or costs not yet experienced by the project which have been approved and can be documented. If none, so certify.

(i) Tax rates or appraisals

(ii) Utility rates

(iii) Contract for employees or services

(iv) Insurance

(8) A copy of the full application to the board with supporting documentation.

(b) The local HUD office shall, promptly upon receipt, review the mortgagor's submission to ascertain that it is complete as required by paragraph (a) of this section. Should the submission be found incomplete, the local HUD office shall notify the mortgagor within 48 hours of said review of its determination that further material is necessary to constitute a complete submission as defined in paragraph (a) of this section.

(c) When the submission is complete, the HUD office shall hold the mortgagor's submission as specified in (a) of this section in abeyance until the preemption request is received pursuant to § 403.9.

(d) If the mortgagor subsequently resubmits any change to the submission as described in paragraph (a) (1) through (7) of this section, it will be required to provide the tenants with an additional 30 days to comment.

* * * * *

A new § 403.9 is added as follows:

**§ 403.9 Request for preemption**

(a) Upon expiration of the period for tenant comments required in the notice format and after review of the comments submitted to it, the mortgagor may submit its request for preemption which must include the following:

(1) A certification by the mortgagor following the requirements specified in § 403.9(b);

(2) Copies of all written comments submitted by the tenants to the mortgagor;

(3) The mortgagor's evaluation of the tenants' comments with respect to the request; and

(4) The board's decision or a statement from the mortgagor certifying that a decision from the board has not been received.

(b) The certification of the mortgagor as required by § 403.9(a)(1) shall include the following:

(1) That the notice required by § 403.8 was given pursuant to the provisions of that section;

(2) That the mortgagor has taken reasonable steps to assure that the substance of the Notice has been conveyed to each resident household, and in cases where the Notice was posted, that the mortgagor exercised its best efforts to assure that the Notices were maintained intact and in legible form for the specified thirty (30) days;

(3) That the copies of the materials submitted in support of the preemption request were located in a place reasonably convenient to tenants in the project during normal business hours and at least one evening a week after business hours, and that requests by tenants to inspect such materials, as provided for in the notice were honored;

(4) That copies of all comments received from the tenants were considered and are being transmitted to HUD together with the certification; and

(5) That "under the penalties and provisions of Title 18, United States Code, Section 1001, the statements contained in this application and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete."

(c) Should the mortgagor receive a delayed decision from the board after filing its preemption request, HUD shall be immediately informed and furnished with a copy.

* * * * *

A new § 403.10 is added as follows:

**§ 403.10 HUD procedures.**

(a) The local HUD office will review the information submitted by the mortgagor together with the decision of the board, if any, and shall make a report if it deems the delay or decision of the board fails to provide adequate residential income to protect the Department's economic interest in the project and the board will not modify its position to the satisfaction of the local HUD office. The report shall be sent to the Office of Loan Management, Headquarters, (hereinafter referred to as Office of Loan Management) and shall include appropriate recommendations concerning the action that should be taken by HUD.

(b) The Office of Loan Management will review the report and will consider whether to preempt the board's regulation. If it finds that the income level permitted by the Board is inadequate to maintain the project as described in § 403.5, it shall issue a formal certificate to the Board that its authority has been preempted as to such rents. Copies of the certificate shall be transmitted to the mortgagor, the local HUD office, and the board.

* * * * *

A new § 403.11 is added as follows:

**§ 403.11 Notification of action on preemption request.**

(a) After HUD has considered the preemption request which meets the requirements of § 403.9 and has made its determination to approve or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval or disapproval. The mortgagor shall make known to tenants, by posting or delivery in the manner outlined in § 403.7 the reasons for approval or disapproval.

(b) The mortgagor may effect collection of the HUD-approved income level which is set at the time of the preemption determination after the expiration of 30 days notice to the tenants, subject to the terms and rights a tenant may have under the existing lease.

(c) Once the project reaches the income level approved under these procedures, the project will be returned to the control of the local rent control board covering both the rents and the terms of prospective leases.

* * * * *

A new § 403.12 is added as follows:

**§ 403.12 Preemption of prospective term of lease.**

(a) In those instances where it will take more than 60 days (2 months) for the project to reach the new income levels, HUD preemption of prospective lease terms shall be effective for those new or renewed leases which by regulation of a local rent control board would require the mortgagor to offer a lease for a term in excess of one year.

(b) As a condition for HUD preemption, the mortgagor must give only one year leases to tenants whose leases expire during the preemption period.

3. In Subpart C—Subsidized Insured Projects, §§ 403.8, Applicability 403.9 Rental charges, and 403.10 Procedures are renumbered as follows:

Sec.
403.20 Applicability.
403.21 Rental charges.
403.22 Procedures.

4. In Subpart D—HUD-Owned Projects, §§ 403.12 Rental charges and 403.13 Procedures, are renumbered as follows:

Sec.
403.30 Rental charges.
403.31 Procedures.

AUTHORITY.—Section 7(d), of the HUD Act; 42 U.S.C. 3535(d).

Issued at Washington, D.C., July 17, 1978.

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

[FR Doc. 78-20482 Filed 7-21-78; 8:45 am]

federal register

MONDAY, JULY 24, 1978
PART VII

# DEPARTMENT OF TRANSPORTATION

## Coast Guard

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# MEASUREMENT OF VESSELS

## Deduction of Spaces Used for Waste Materials

[4910-14]

## Title 46—Shipping

## CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 75-078]

## PART 69—MEASUREMENT OF VESSELS

### Deduction of Spaces Used for Waste Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the regulations for the measurement of vessels to permit a space that is used exclusively for the carriage or collection of a vessel's own waste material and space occupied by machinery to process such waste material to be deducted from gross tonnage to determine net tonnage. Concern for the environment has made it necessary for vessels to be provided with facilities to collect, carry and process waste materials. The volume of such spaces should not be included in the net tonnage which is used as the basis of assessing many charges and taxes.

EFFECTIVE DATE: This amendment is effective on August 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 203-426-1477.

SUPPLEMENTARY INFORMATION: On April 22, 1976, the Coast Guard published the proposed rule (41 FR 16826). Interested persons were invited to submit written comments before June 7, 1976. Three comments were received.

DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Mr. P. S. Stitt, Project Manager, Office of Merchant Marine Safety, and Mr. M. N. Mervin, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF MAJOR COMMENTS

Pub. L. 93-524, approved December 18, 1974, directed the Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator of the Environmental Protection Agency, to issue these regulations.

Of the three comments received, one endorsed the proposed amendment. The other two noted that under the proposed amendment a space currently exempt from gross tonnage would lose its exemption if converted to the carriage or processing of waste material. These comments suggested that a space used for the carriage, collection, or processing of waste materials should be exempted, rather than deducted, from the gross tonnage.

The Coast Guard cannot comply with the suggestions. The only space within the measurable portion of the hull below the upper deck of a vessel which may be exempted from the gross tonnage is space adapted only for water ballast. The only spaces on or above the upper deck of a vessel that are exempted from the gross tonnage are:

1. Open spaces;
2. Closed-in spaces which are not available for cargo or stores, or for the berthing or accommodation of passengers or crew; and
3. Under specified conditions, space available for the carriage of dry cargo and stores.

Since space taken up by machinery to process waste material is not available for cargo, stores, or for accommodation of passengers or crew, it is exempted from gross tonnage, if on or above the upper deck. On the other hand, space on or above the upper deck for the carriage of waste materials is by its nature also available (usable) for the carriage of cargo or stores, and is, therefore, included in the gross tonnage.

The act which this rulemaking implements specifies that space occupied by machinery used exclusively to process a ship's own waste material and space used exclusively for the carriage or collection of such waste material shall be deducted. These implementing regulations, therefore, require that space for the collection and carriage of waste material wherever located in the measurable portion of the vessel on which the waste material was generated and space below the upper deck occupied by machinery to process the material are to be deducted from the gross tonnage in determining the net tonnage. The amendment is adopted as set forth below.

This regulation has been reviewed under DOT Notice 78-1 "Improving Government Regulations" (43 FR 9582). A final evaluation has been prepared and is available for viewing at the address indicated above.

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

Dated: July 14, 1978.

J. B. HAYES,
*Admiral, U.S. Coast Guard*
*Commandant.*

Part 69 of title 46, Code of Federal Regulations, is amended as follows:

1. By adding a new section, § 69.03-78, to read as follows:

**§ 69.03-78 Deduction of spaces used for waste materials.**

(a) *Definitions of waste materials.* Slop oil mixtures, tank cleaning residues, bilge residues, and other waste materials include:

(1) Liquid wastes resulting from flushing or cleaning the vessel's bilges, fuel tanks, cargo tanks, and propulsion and operating systems.

(2) Residual solid and liquid wastes resulting from cleaning the vessel's bilges, and crew, passenger, cargo, and operating spaces.

(3) Solid and liquid wastes, including sewage, garbage, galley wastes, and trash, generated by the vessel's own cargo, passengers, crew, and operating systems.

(b) *Use and marking of spaces to carry or process waste materials.* In determining a vessel's net tonnage, the following spaces are deducted from the gross tonnage if they meet the use and marking requirements of § 69.03-75 (a), (b), and (c) of this subpart and are no larger than necessary for the stated purpose:

(1) Space below the upper deck occupied by machinery used exclusively to separate, clarify, purify, or otherwise process a vessel's own—(i) slop oil mixture; (ii) tank-cleaning residue; (iii) bilge residue; or (iv) other waste material.

(2) Space either above or below the upper deck occupied by any tank or collection area used exclusively for the carriage or collection of any such slop oil mixture, tank-cleaning residue, bilge residue or other waste material generated aboard the vessel.

2. By inserting in § 69.03-75(c) after the introductory clause, "the following markings are required by paragraph (b) of this section:", the following words: "For each space used exclusively for waste materials, as defined in § 69.03-78(a) of this subpart—"Certified for waste storage" or "Certified for waste processing."

(R.S. 4153, as amended, 88 Stat. 1694, 46 U.S.C. 77, 49 CFR 1.4(b) and 1.46).

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MONDAY, JULY 24, 1978
PART VIII

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# DEPARTMENT OF TRANSPORTATION

## Coast Guard

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# NAVIGATION SAFETY REGULATIONS

## Additional Equipment for Vessels of 10,000 Gross Tons or More

[4910-14]

## Title 33—Navigation and Navigable Waters

## CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-016]

## PART 164—NAVIGATION SAFETY REGULATIONS

### Additional Equipment for Vessels of 10,000 Gross Tons or More

AGENCY: Coast Guard, DOT.

ACTION: Final rule; withdrawal of proposed rule.

SUMMARY: This document amends the navigation safety regulations by requiring vessels of 10,000 gross tons or more to carry an additional marine radar system. It also withdraws the proposal to require collision avoidance equipment on those vessels. The second radar requirement will provide both redundancy and flexibility in the navigation of large vessels, thereby improving the safety of their navigation.

EFFECTIVE DATE: This amendment is effective on June 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on these subjects was published on May 16, 1977 (42 FR 24871). Interested persons were given until September 1, 1977 to submit comments. The comment period subsequently was extended to November 15, 1977 at the request of several interested persons. Public hearings were held in San Diego, Calif., on June 16, 1977 and in Washington, D.C., on June 21, 1977.

This rulemaking is consistent with the intent of President Carter's March 17, 1977, message to Congress in which he directed the Secretary of Transportation to proceed with both proposals. The President recognized that pollution is a global problem and that international action is the best solution. He therefore allowed 5 years for his proposals to be considered and acted upon. Given the existing climate of international agreement on the second radar and in view of the ongoing negotiations concerning collision avoidance aids, it is expected that both matters will be resolved within that time.

#### Drafting Information

The principal persons involved in drafting this rule are Mr. Fred Schwer, Project Manager, Office of Marine Environment and Systems, and Mr. Stanley Colby, Project Attorney, Office of Chief Counsel.

#### Withdrawal of Proposal to Require Collision Avoidance (CA) Aids

Responses to the notice of proposed rulemaking were split nearly evenly, pro and con on the subject of CA aids. Eighty-eight favorable comments were received, 76 of which were from private citizens expressing general concern for the environment and 12 of which were from directly interested parties, such as ship owners, CA manufacturers, and other Government agencies. Eighty-five commenters objected to or suggested various changes in the proposal.

The 1978 Tanker Safety and Pollution Prevention Conference, a plenipotentiary ministerial conference including 62 nations and 17 international organizations, was held in London from February 6 to 18, 1978. The Conference adopted the second radar requirement as an international standard, but deferred action on CA aids. Instead, the Conference requested the Intergovernmental Maritime Consultative Organization (IMCO), a U.N. agency, to "* * * develop performance standards for collision avoidance aids as a matter of urgency and not later than July 1, 1979." The Conference further requested IMCO to prepare requirements for the carriage of CA aids and to develop a training program for instruction in the use of the aids.

In view of the responses to the notice of proposed rulemaking and in light of the actions of the recent Tanker Conference, the Coast Guard is withdrawing the proposal in CGD 77-016 that would require CA aids. Coast Guard representatives will participate in the IMCO proceedings and will reevaluate the need for a U.S. rulemaking on the requirement for CA aids when the international body has completed its work. Persons wishing to contribute to U.S. participation in the IMCO discussions may contact Captain Greiner for further information.

#### Discussion of Major Comments Concerning Second Radar

Ninety-five letters of comment supporting the requirement of a second radar system on large vessels were received. They included 76 letters of environmentally motivated general support as well as letters from pilots, ship owners, manufacturers, State and Federal agencies and others. Four correspondents suggested that the decision to install a second radar system would be better left to the ship owner. They pointed out that some vessels are dedicated to service in areas that rarely have poor visibility or heavy vessel traffic. One other commenter recommended that mobile offshore drilling units be excluded from the requirement.

The Coast Guard does not agree with either of these suggestions. Radar is a time tested and proven aid for navigation and collision avoidance. Self-propelled vessels of 10,000 gross tons and larger should not be left handicapped and possibly endangered by the failure of their primary radar. Moreover, a second working radar adds an element of flexibility in radar use that can enhance safe navigation.

The 1978 Tanker Safety Conference concurred in the value of a second radar system for large vessels. The Conference adopted a protocol with a change to chapter V, regulation 12, of the International Convention for the Safety of Life at Sea, 1974 (SOLAS '74), which will require "all ships of 10,000 tons gross tonnage and upwards [to] be fitted with two radars, each capable of operating independently of the other." The SOLAS '74 Convention is before the U.S. Senate for its advice and consent. The protocol will be submitted to the U.S. Senate when the official text has been received. The June 1, 1979, effective date for this regulation is in accordance with international commitments made at the Tanker Safety Conference.

There has been some discussion about the meaning of the phrase "* * * each capable of operating independently of the other." The intent is to require two completely separate systems, including antenna, waveguides, consoles, etc., and a separate branch power supply circuit, so that a failure of any system component will not disable both systems. This is consistent with the intent of the Coast Guard proposal [as discussed in the May 16th notice], for without discrete systems there is no redundancy.

In consideration of the foregoing, part 164 of chapter I, title 33, Code of Federal Regulations is amended by adding new § 164.37 to read as follows:

**§ 164.37 Equipment: Vessels of 10,000 gross tons or more.**

Each vessel of 10,000 gross tons or more must have, in addition to the radar system under § 164.35(a), a second marine radar system that operates independently of the first.

NOTE.—Independent operation means two completely separate systems, from separate branch power supply circuits or distribution panels to antennas, so that failure of any component of one system will not render the other system inoperative.

(Titles I and II, 86 Stat. 426, 427 (33 U.S.C. 1224; 46 U.S.C. 391a); 49 CFR 1.46(n)(4).)

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

J. B. HAYES,
*Admiral, U.S. Coast Guard*
*Commandant.*

JULY 19, 1978.

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