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highlights

FEDERAL GRANT PROGRAMS

Announcing a New Weekly Feature

To assist readers wishing to keep abreast of federally funded grant programs, the FEDERAL REGISTER has added a new listing to the weekly Reminders section published every Wednedsay. Beginning with the issue of August 2, 1978, the Wednesday Reminders section will include a listing of grants related documents published in the FEDERAL REGISTER during the previous week.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

NOTE: As of July 3, 1978, documents from the following agencies in the Department of Health, Education, and Welfare are no longer being assigned to the Tuesday/Friday schedule: Alcohol, Drug Abuse and Mental Health Administration (ADAMHA); Center for Disease Control (CDC); Health Resources Administration (HRA); Health Services Administration (HSA); National Institutes of Health (NIH); and Public Health Service (PHS).

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●NOTE: The Office of the Federal Register is interested in suggestions from its readers about the new listing of documents relating to Federal Grants programs. If you have any comments on the usefulness or format of this new feature, please send them to Mr. Dean Smith, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.●

rules and regulations

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

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

[3410-02]

Title 7—Agriculture

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

[Tokay Grape Reg. 14]

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIF.

Regulation of Grade and Container Markings

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets minimum grade and container marking requirements for Tokay grapes shipped during the period August 10 through September 30, 1978. These requirements are necessary to assure that the grapes shipped will be of suitable quality in the interest of consumers and producers.

EFFECTIVE DATE: August 10, 1978.

FOR FURTHER INFORMATION CONTACT.

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the provisions of the marketing agreement and order No. 926 (7 CFR Part 926), hereinafter referred to collectively as the "order." The order regulates the handling of Tokay grapes grown in San Joaquin County, Calif., and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The regulation was recommended by the Industry Committee established under the order. It is hereby found that the regulation of Tokay grapes, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This regulation is based upon an appraisal of the current and prospective crop and marketing conditions for Tokay grapes. The committee estimates that 1978 production of Tokay grapes will be about 103,415 tons, and fresh shipments are estimated at 14,375 tons. The grade and container requirements are necessary to prevent the handling of fresh Tokay grapes of lesser quality than specified and are designed to provide ample supplies of good quality fruit in the interest of producers and consumers. The requirements are that such grapes meet the grade and size specificaions of U.S. No. 1 table grapes and that at least 30 percent, by count, of the berries in the lower 25 percent, by count, of each bunch shall show characteristic color. Each container of such grapes must bear a Federal-State Inspection Service lot number in plain letters and figures on one outside end. The requirement for more even distribution of color (30 percent of the grapes in the lower quarter of each bunch showing characteristic color) is also included to assure the availability to consumers of Tokay grapes of satisfactory quality. Compliance with the container marking requirement will verify inspection thus assuring compliance with the quality requirements specified herein.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because of insufficient time between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. In order to effectuate the declared purposes of the act, it is necessary to make these regulatory provisions effective as specified; and handlers have been apprised of such provisions and the effective time. Compliance with this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time.

§ 926.315 Tokay grape regulation 14.

(a) During the period August 10, 1978, through September 30, 1978, no handler shall ship:

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 table grapes and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at leat 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definition.* As used herein, the terms "handler", "ship", and "production area" shall have the same meaning as when used in the amended marketing agreement and order; "U.S. No. 1 table grapes" and "characteristic color" shall have the same meaning as when used in the United States Standards for Table Grapes (7 CFR 51.880-51.912).

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

Dated: August 7, 1978.

MALVIN E. MCGAHA,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-22382 Filed 8-8-78; 8:45 am]

[4410-10]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

Amendment of List of Countries in Which Applications for Conditional Entry May Be Processed

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service respecting the eligibility of aliens to submit applications for conditional entry in the country of Spain. The amendement is necessary and intended to reflect the terms of the agreement entered into

between the Government of the United States and the Government of Spain which provides that eligibility to file an application for conditional entry in Spain is limited to Cubans who are in Spain temporarily as visitors.

EFFECTIVE DATE: August 9, 1978.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: 202-376-8373.

SUPPLEMENTARY INFORMATION: On July 15, 1977, at 42 FR 36448, the Service published an amendment to 8 CFR 235.9(a) in which Spain was added to the list of countries in which aliens could file applications for conditional entry into the United States under section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7). However, the agreement between the two countries limited the class of aliens whose conditional entry applications could be processed in Spain to Cubans who are in Spain temporarily as visitors. Therefore, it is necessary to amend 8 CFR 235.9(a) by deleting Spain from the first sentence of that paragraph. Also, a new subparagraph (a-1) will be added to set forth the conditions under which aliens may submit conditional entry applications in the country of Spain under the terms of the agreement reached between that country and the United States.

Accordingly, the following amendments are hereby prescribed to Chapter I of Title 8 of the Code of Federal Regulations:

1. In part 235, § 235.9(a) is revised as set forth below.

§ 235.9 Conditional entries.

(a) *Countries in which applications may be filed.* Pursuant to agreements entered into with the governments of the countries concerned, officers of the Service are authorized to accept applications and to examine the qualifications of applicants for conditional entry under section 203(a)(7) of the Act in Austria, Belgium, France, Germany, Greece, Hong Kong, Italy, and Lebanon. Applications for conditional entry may be filed only by aliens who are physically present within one of the designated countries.

* * * * *

2. Section 235.9 is further amended by adding a new subparagraph (a-1) to read as follows:

* * * * *

(a-1) *Filing of conditional entry applications in Spain.* Pursuant to a special agreement entered into with the government of Spain, applicants for conditional entry pursuant to section 203(a)(7) of the Act may be accepted in Spain by Service Officers only in behalf of natives or citizens of Cuba who are temporarily in that country as visitors. However, Cubans are not prohibited from applying for conditional entry in those countries enumerated in paragraph (a) of this section.

* * * * *

(Sec. 103; 66 Stat. 173 (8 U.S.C. 1103).)

These amendments are published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because the amendments contained in this order relate to agency procedure and management and are necessary to bring our regulations into conformity with the Agreement between the Government of the United States and the Government of Spain respecting the filing of applications for conditional entry in that country.

Effective date. This amendment becomes effective on August 9, 1978.

Dated: August 3, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-22152 Filed 8-8-78; 8:45 am]

[6720-01]

Title 12—Banks and Banking

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

Subchapter C—Federal Savings and Loan System

[No. 78-436]

PART 545—OPERATIONS

Servicing of Loans

AUGUST 2, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: This rule extends the authority of Federal associations to service loans for others to include under certain conditions servicing of loans made by certain public housing corporations and private not-for-profit organizations. Such additional authority is needed to permit greater cooperation by Federal associations in the activities of such corporations and organizations. This rule also clarifies the authority of Federal associations to service certain loans for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corp.; such clarification is needed because amendment of the sections of the regulations describing such loans has rendered such authority uncertain.

EFFECTIVE DATE: September 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, Washington, D.C. 20552, 202-377-6440.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Resolution No. 77-159, dated March 4, 1977, proposed to amend § 545.11 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.11) for the purpose of clarifying and extending the authority of Federal associations to service loans for others. Notice of such proposed rulemaking was published in the FEDERAL REGISTER on March 10, 1977 (42 FR 13302), with an invitation to interested persons to submit written comments by April 11, 1977.

All nine public comments received recommended adoption of the proposal, and on the basis of those comments and all other relevant information available to it, the Board deems it advisable to adopt the amendments as proposed, except for minor changes to omit unnecessary language.

EFFECT OF AMENDMENTS

Section 545.11 presently authorizes a Federal association to (1) service loans which it owns or in which it has a participation interest and (2) service for others loans in which any of certain specified entities owns or has owned an interest. These amendments extend such authority to permit a Federal association to service loans made and owned by a public housing corporation or not-for-profit private organization, established for the sole purpose of providing directly or indirectly for housing and incidental services, including financing, particularly for families of low or moderate income. The total amount of such loans serviced by a Federal association is limited to 25 percent of the total dollar amount of its mortgage portfolio, and such public housing corporation or

private not-for-profit organization must be established or chartered by a State or political subdivision in which the principal office or a branch office of the association is located.

The amendments also clarify the authority of Federal associations to service loans in which an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation owns any interest if such interest was acquired pursuant to § 563.9 or paragraph (b) of § 563.9-1 of the rules and regulations for insurance of accounts (12 CFR 563.9 and 563.9-1).

REASONS FOR AMENDMENTS

The Board has previously recognized the value of such public housing corporations and private not-for-private organizations by permitting Federal associations to invest in them under certain conditions. By adding new paragraph (g) to § 545.11 to permit Federal associations to service loans for such organizations, the Board intends to provide Federal associations additional opportunity to cooperate in the worthy efforts of these organizations.

The Board considers revision of paragraph (f) of § 545.11 necessary because the present reference in that paragraph to § 563.9(a) predates 1973 amendments to §§ 563.9 and 563.9-1 which rendered such reference ambiguous. Before those amendments, § 563.9(a) contained several provisions authorizing insured institutions to invest in loans outside their normal lending territories. Present § 563.9(a) merely limits the scope of nationwide lending to the provisions of § 563.9 and § 563.9-1(b). Therefore, revised § 545.11(f) refers to § 563.9 and § 563.9-1(b) rather than § 563.9(a).

DISCUSSION OF COMMENTS

One respondent questioned whether the intent of proposed new paragraph (g) is to authorize Federal associations to service loans for an organization chartered by a political subdivision (e.g. a city) in which the association has no office, if the association has an office in the State in which such political subdivision is located. Respondent recommended that paragraph (g) provide such authority.

The Board does not intend to encourage a Federal association to service loans for an organization operating in an area where the association has no office. Therefore paragraph (g) permits Federal associations to service loans only for organizations chartered by a State or political subdivision in which the association has its main office or a branch office.

The other public comments simply approved the proposed amendment.

Accordingly, the Board hereby amends paragraph (f) of § 545.11 of the rules and regulations for the Federal Savings and Loan System and adds a new paragraph (g) thereto, to read, effective September 11, 1978, as follows:

§ 545.11 Servicing of loans.

A Federal association may, except as otherwise limited by regulation, service any loan which it owns or has a participation interest in, and may service for others any loan in which—

* * * * *

(f) An institution insured by the Federal Savings and Loan Insurance Corporation owns any interest acquired under § 563.9 or paragraph (b) of § 563.9-1 of this chapter; or

(g) Total proceeds were disbursed, and sole ownership is retained, by a public housing corporation, or a not-for-profit private organization, established or chartered by any State or political subdivision thereof (including the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States) if: (1) The principal office or a branch office of such association is located in such State or political subdivision; (2) the sole purpose of such corporation or organization is to provide directly or indirectly for housing and incidental serv- ices, including financing, particularly for families of low or moderate income; and (3) undertaking to service such loan will not cause the total outstanding balance of all such loans serv- iced by such association to exceed 25 percent of its mortgage portfolio.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-22125 Filed 8-8-78; 8:45 am]

[6720-01]

[No. 78-437]

COMPLIANCE WITH PREMERGER NOTIFICATION (SECTION 7A OF THE CLAYTON ACT)

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board amends its regulations governing mergers and acquisitions. The Bank Board issues these amendments in order to reflect the premerger notification requirements of the Clayton Act. Under these rules, parties contemplating certain mergers must give advance notice to the Federal Trade Commission and the Assistant Attorney General.

EFFECTIVE DATE: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Lawrence W. Hayes, Assistant General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Telephone number: 202-377-6428.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission ("FTC") has promulgated (43 FR 33450) premerger notification rules which implement section 7A of the Clayton Act (15 U.S.C. § 18A). Section 7A requires persons contemplating certain direct or indirect mergers (generally, those in which one merging institution has at least $100 million and the other at least $10 million in assests) to give the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("AAG") advance notice and to wait certain designated periods before consummation of such mergers. Although savings and loan mergers and holding company acquisitions that need Bank Board approval have the benefit of a limited exemption from section 7A (in subsection (c)(8)), the parties to these transactions must still file with the FTC and AAG and are subject to a 30-day waiting period.

The FTC rules contain a special full exemption for mergers or acquisitions subject to Bank Board approval if the Bank Board finds that approval is necessary to prevent probable failure of one of the institutions involved. The Bank Board will include such a finding in an approving resolution where appropriate.

There are some special cases in which, if certain criteria are met, section 7A might apply to other transactions affecting institutions regulated or supervised by the Bank Board: For example, the formation of some joint venture corporations involving insured assocations or certain stock acquisitions incidental to a merger; however, the special circumstances in which these transactions would bring section 7A into play are likely to be very rare and will be considered on a case-by-case basis.

The Bank Board finds it advisable to include a premerger notification provision in its regulations governing those instances which will most often require filing with the FTC and AAG by

amending the sections of its regulations which describe application procedures for (1) mergers involving at least one Federal assocation (12 CFR 546.2), (2) merger of FSLIC-insured institutions (12 CFR 563.22) and (3) acquisitions by a savings and loan holding company (12 CFR 584.4).

Because it is important that these requirements take effect concurrently with the FTC rules, the Bank Board finds that (1) notice and public procedures with respect to such amendments are contrary to the public interest and unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. § 553(b); and (2) publication of the amendments for the 30-day period specified in 5 U.S.C. § 553(d) and 12 CFR 508.14 prior to the effective date is unnecessary for the same reason.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

PART 563—OPERATIONS

PART 584—REGULATED ACTIVITIES

§ 546.2 [Amended]

§ 563.22 [Amended]

§ 584.4 [Amended]

Accordingly, 12 CFR §§ 546.2(c), 563.22(a), and 584.4(f) are amended effective August 30, 1978, by adding at the end of the first paragraph of each of these subsections the following sentence:

* * * * *

* * * An applicant shall also comply with sections 7A of the Clayton Act (15 U.S.C. § 18A) and regulations issued thereunder (16 CFR Parts 801, 802, and 803).

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Sec. 408, 82 Stat. 5; 12 U.S.C. 1730a. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-22203 Filed 8-8-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9081]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Levi Strauss & Co.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: This consent order, among other things, requires a San Fancisco, Calif. clothing manufacturer to cease establishing and enforcing resale price agreements; soliciting the identities of recalcitrant dealers; and threatening, penalizing or terminating such dealerships. Further, the firm is prohibited from unfairly restricting the use of its trademark; engaging in unlawful tie-in practices; and disseminating any materials suggesting resale prices for 5 years.

DATES: Complaint issued May 6, 1976. Decision issued July 12, 1978.*

FOR FURTHER INFORMATION CONTACT:

William A. Arbitman, Director, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Avenue, San Francisco, Calif., 94102, 415-556-1270.

SUPPLEMENTARY INFORMATION: On Tuesday, March 14, 1978, there was published in the FEDERAL REGISTER, 43 FR 10572, a proposed consent agreement with analysis In the matter of Levi Strauss & Co., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart—Coercing and intimidating: § 13,358 Distributors. Subpart—Combining or conspiring: § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.430 To enhance, maintain or unify prices; § 13.450 To limit distribution or dealing to regular, established or acceptable channels or classes; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures. Subpart—Cutting off access to customers or market: § 13.540 Forcing goods; § 13.560 Interfering with distributive outlets. Subpart—Cutting off supplies or service: § 13.610 Cutting off supplies or service; § 13.613 Advertising contacts; § 13.635 Refusing sales to, or same terms and conditions; § 13.655 Threatening disciplinary action or otherwise. Subpart—Dealing on exclusive and tying basis: § 13.670 Dealing on exclusive and tying basis; 13.670-20 Federal Trade Commission Act. Subpart—Delaying or withholding corrections, adjustments or action owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart—Maintaining resale prices: § 13.1130 Contracts and agreements; § 13.1140 Cutting off supplies; § 13.1145 Discrimination; § 13.1145-5 Against price cutters; § 13.1150 Penalties; § 13.1155 Price schedules and announcements; § 13.1160 Refusal to sell; § 13.1165 Systems of espionage; 13.1165-80 Requiring information of price cutting.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-22168 Filed 8-8-78; 8:45 am]

* Copies of the complaint, and the decision and order filed with the original document.

[4810-22]

Title 19—Customs Duties

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

[T.D. 78-260]

PART 153—ANTIDUMPING

Antidumping Investigation Procedures Under Antidumping Act, 1921

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs regulations relating to antidumping investigations which involve merchandise from countries whose economies are determined to be "state-controlled" for the purpose of the Antidumping Act, 1921, as amended. The amended regulations provide that in determining the fair value of merchandise from a state-controlled-economy country through comparisons with prices or the constructed value of merchandise in a country or countries not regarded as having a

state-controlled-economy, the Secretary of the Treasury may give recognition to the level of economic development and to relative efficiencies or natural advantages in the state-controlled-economy country. In addition, the amended regulations provide that antidumping petitions which involve merchandise from a state-controlled-economy country should contain information pertinent to the new procedures.

EFFECTIVE DATE: The amendments will become effective as noted below under that part of the document entitled "Effective Date."

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 9, 1978, notice was published in the FEDERAL REGISTER (43 FR 1356) of a proposal to amend §§ 153.7 and 153.27 Customs regulations (19 CFR 153.7 and 153.27), concerning investigations under the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) ("the act"), which involve merchandise imported from a "state-controlled-economy country." Section 205(c) of the act (19 U.S.C. 164(c)), as added by the Trade Act of 1974, provides that the Secretary of the Treasury ("the Secretary") may determine the foreign market value of merchandise exported from a state-controlled-economy country on the basis of the normal costs, expenses, and profits for the merchandise, as reflected by the prices or the constructed value of such or similar merchandise from a non-state-controlled-economy country or countries. Based on its experience in administering this provision and in an effort to make comparisons on a more equivalent and realistic basis, it was concluded that when the foreign market value, and thereby the fair value, of merchandise from a state-controlled-economy country is being determined based upon the prices or the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, the latter country or countries should be comparable in terms of economic development to the state-controlled-economy country in which the merchandise under investigation is produced.

Accordingly, it was proposed to amend § 153.7 to provide that prices shall be used as a basis of comparison if they are available from a non-state-controlled-economy country of comparable economic development. Where such or similar merchandise is not produced and sold in sufficient quantities in a non-state-controlled-economy country comparable in terms of economic development to the state-controlled-economy country from which the merchandise is exported, a constructed value could be used. When constructed value is used as the basis for fair value, it would be determined based upon the actual factors of production in the state-controlled-economy country as valued in a non-state-controlled-economy country of comparable economic development. If such factors and values cannot be adequately verified, then prices of such or similar merchandise sold or produced by any other non-state-controlled-economy country including, if necessary, the United States would be used.

It also was proposed to amend § 153.27(a)(3) (i), (ii), and (iii) to distinguish clearly certain types of information required in any petition involving merchandise from a state-controlled-economy country, as well as to require that such petitions include information pertinent to the comparability of the state-controlled-economy country with a non-state-controlled-economy country from which prices or constructed value are to be determined.

Interested persons were invited to submit comments on the proposed amendments on or before February 8, 1978. By notice published in the FEDERAL REGISTER on February 6, 1978 (43 FR 4871), the comment period was extended to February 22, 1978.

DISCUSSION OF COMMENTS

USE OF PRICES OR CONSTRUCTED VALUE IN DETERMINING FAIR VALUE

A number of commenters argued that the proposed amendments would depart from the statutory requirements for determining the fair value of merchandise from a state-controlled-economy country. Some commenters interpreted the proposed amendments as giving preference to prices over contructed value in determining fair value. Others believed the amendments would make the constructed value of such or similar merchandise in a non-state-controlled-economy country the primary determinant of fair value.

Section 205(c) provides that the Secretary shall determine the foreign market value in antidumping investigations of merchandise from a state-controlled-economy-country on the basis of the normal costs, expenses, and profits as reflected by either—

(1) The prices at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either: (A) For consumption in the home market, of that country or countries, or (B) to other countries, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country or countries.

It is the position of the Treasury Department that section 205(c) provides that either prices or constructed value may be used by the Secretary in determining the foreign market value and thereby the fair value, depending upon the information available in the particular case under consideration. To indicate more clearly that the regulations are intended to follow the statutory standards, § 153.7(a) retains the statutory structure.

AUTHORITY FOR APPLYING A STANDARD OF COMPARABILITY OF ECONOMIES

Some commenters questioned the authority of the Treasury Department to make adjustments in determining fair value based on differences in the level of economic development between the non-state-controlled-economy country or countries and the state-controlled-economy country, or to determine fair value on the basis of prices for such or similar merchandise in a non-state-controlled-economy country of comparable economic development. One commenter objected that the proposed regulations would provide for examination of economic criteria and factors of production in the state-controlled-economy country whose merchandise is under investigation even though, in his view, the intent of the law is that information concerning markets and products in state-controlled-economy countries must be disregarded altogether.

Section 205(c) of the act provides that the Secretary shall determine the foreign market value, and thereby the fair value, of merchandise from a state-controlled-economy country on the basis of the normal costs, expenses, and profits as reflected by the prices or constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, as set forth in sections 205 (c)(1) and (c)(2) of the act. This provision reflects congressional concern that state control of an economy renders inherently suspect the prices and costs of producers in such countries. Therefore, the prices (or costs, if appropriate) are to be determined from a non-state-controlled-economy country. In selecting a non-state-controlled-economy country as a surrogate for the country from which the products, in fact are being exported to the United States, the Treasury in the past has attempted to select a country that is most like the exporting country. The standard for selection, however, has not been articulated clearly. The present regulation seeks to provide such a standard, consistent with the principles of the Antidumping Act which at-

tempt generally to establish the "fair value" of merchandise from the practices of the foreign producer or, in the instant case, of the surrogate producer.

One commenter argued that the most suitable non-state-controlled-economy country to be selected is the one with a market for sales most like the United States. This, however, is, not the usual priority established by the Act. Under section 205(a) of the act and § 153.2(a) Customs regulations (19 CFR 153.2(a)), it is the home market that is the preferred reference for establishing the foreign market value, and thereby the fair value. The proposed regulation attempts to follow that concept by using data from another country, but not a state-controlled-economy country, most like the unavailable home market. The prices in such a country will be the preferred reference, but costs may be used if sales in a non-state-controlled economy country are insufficient or data is unavailable.

Even though the prices and costs in the state-controlled-economy country are not regarded as sufficiently reliable to establish the foreign market value, and thereby the fair value, of merchandise, the actual physical inputs in such a country can be recorded and verified. If adequately recorded and verified, they should provide a reliable measure of the capabilities of the producer to make and sell the merchandise in question. These inputs then can be valued in a non-state-controlled-economy country, and the appropriate value established, which recognizes both the natural advantages and possible disadvantages of production for the producer. This method should accord most closely with the statutory requirement of section 205(c) of the act that the "normal costs" be found. Based on past experience and practice—which the Congress sought to incorporate into the act—the regulatory provisions hereby adopted seem best suited to achieving the purposes of the act as a whole in the unique circumstances to which they are addressed.

The Treasury Department believes that the new procedures are necessary for fulfilling properly its responsibilities under the act and are consistent with both its past practices and the law that adopted those practices. For example, the Treasury Department has based, in part, its selection of a non-state-controlled-economy country or countries for price comparison purposes on the comparabilities of that country's or countries' level of economic development with that of the state-controlled-economy country from which the merchandise under investigation was exported.

Comments on Proposed Comparison Procedures

Some commenters argued that the fact that the proposed regulations require examination and comparison of production costs in various countries introduces elements of unreliability and speculation in determinations of fair value. Similarly, it was contended that there is no reliable basis for applying a standard of comparability between state-controlled-economy countries and non-state-controlled-economy countries. Further, it was suggested that without detailed guidelines and definitions in the regulations, persons affected will not be able to make informed judgments as to whether they are in compliance with the statute.

The regulations as adopted should make clear that costs of production in a non-state-controlled-economy country of comparable economic development will be used only if: (1) Price information is unavailable, and (2) verified information is made available by the state-controlled-economy country producer concerning the specific factors actually used in producing the merchandise exported to the United States. As stated in the amended regulations, these specific factors include, but are not limited to, hours of labor required, quantity of materials employed, and amounts of energy consumed. The valuation of these components and factors in a comparable non-state-controlled-economy country also would be required to be subject to verification.

The basis for the use of constructed value in fair value determinations under the act generally is that the components and factors of production can usually be ascertained, for any given type of merchandise, and if verified, provide a reliable basis for determining fair value. Similarly, comparability in ecomonic development will be determined from per capita gross national product, the level of infrastructure (particularly in the sectors of the economy at issue), and other widely used criteria for which generally reliable information is publicly available.

Proposed § 153.7(b)(i) is not being adopted. This section provided for adjustments for differences in economic factors between: (1) A non-state-controlled-economy country or countries actually producing such or similar merchandise, and (2) a non-state-controlled-economy country or countries determined to be comparable in terms of economic development to the state-controlled-economy country whose merchandise was under investigation. Upon further consideration, it has been concluded that adoption of this provision would, as the commenters argued, be relatively speculative and unreliable, and would create an unnecessary burden upon persons involved in an investigation, without significantly improving the Treasury Department's ability to ascertain the normal costs, expenses, and profits.

Use of U.S. Prices or Constructed Value

Some commenters contended that section 205(c) of the act does not authorize the use of prices or constructed value of such or similar merchandise in the United States.

The Treasury Department does not agree with this interpretation of the statutory language. Proposed § 153.7(b)(3) is not new, but merely restates the provision for the use of prices or constructed value of U.S.-produced merchandise in the existing § 153.7 and, indeed, in § 153.5 of the Customs regulations in effect prior to the Trade Act of 1974. Specifically, former § 153.5 provided for the use of "prices at which such or similar merchandise is sold by a non-state-controlled-economy country." The Treasury Department considers that this language clearly authorized, and continues to authorize, the use of U.S. prices in appropriate situations.

Editorial Changes

In addition to the change in format and deletion of proposed § 153.7(b)(i), the last sentence of proposed § 153.7(b)(ii), which is being adopted as the last sentence of § 153.7(c), is revised to read as follows:

(c) * * * To the constructed value thus obtained, there shall be added an amount for general expenses and profit, as required by section 206(a)(2) of the act (19 U.S.C. 165(a)(2)), and the cost of all containers and coverings and other expenses, as required by section 206(a)(3) of the act.

After consideration of all comments received and further review of the matter, it has been determined that the amendments should be adopted as proposed, except for the note changes.

Effective Date

These amendments will take effect on or before September 8, 1978, with respect to investigations initiated on or after that date, and to the extent practicable, will be applied to any investigations pending on the effective date. Similarly, the Department intends to adopt the procedures set forth in these amendments for the purposes of determining whether special dumping duties should be assessed on any merchandise entered for consumption or withdrawn from warehouse for consumption on or after the effective date. Recognizing the need to assess the effects of these amendments, the Department will evaluate the impact of these amendments as soon as sufficient experience has been

acquired, with a view to making further revisions if deemed appropriate.

DRAFTING INFORMATION

The principal author of this document was Edward T. Rosse, Regulations and Legal Publications Division, U.S. Customs Service. However, other personnel in the Customs Service and the Treasury Department assisted in its development.

AMENDMENTS TO THE REGULATIONS

Part 153 of the Customs regulations (19 CFR Part 153) is amended as set forth below.

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: August 3, 1978.

ROBERT H. MUNDHEIM,
General Counsel, of the Treasury.

1. Section 153.7 is amended to read as follows:

§ 153.7 Merchandise from state-controlled-economy country.

(a) *General.* If the information available indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under § 153.2, § 153.3, or § 153.4, the Secretary shall determine fair value on the basis of the normal costs, expenses, and profits as reflected by either:

(1) the prices, determined in accordance with subsection 205(a) and section 202 of the act (19 U.S.C. 164(a), 161) at which such or similar merchandise of a non-state-controlled economy country or countries is sold either: (i) For consumption in the home market of that country or countries, or (ii) to other countries, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country or countries.

(b) *Comparability of economies.* (1) The prices as determined under § 153.7(a)(1), or the constructed value as determined under § 153.7(a)(2), shall be determined, to the extent possible, from the prices or costs in a non-state-controlled-economy country or countries at a stage of economic development comparable to the state-controlled-economy country from which the merchandise is exported. Comparability of economic development shall be determined from generally recognized criteria, including per capita gross national product and infrastructure development (particularly in the industry producing such or similar merchandise).

(2) If no non-state-controlled-economy country of comparable economic development can be identified, then the prices or constructed value as determined from another non-state-controlled-economy country or countries other than the United States shall be used.

(3) If neither § 153.7 (b)(1) nor (b)(2) provides an adequate basis for determining the price or constructed value of such or similar merchandise, then the prices or constructed value, as determined from the sales or production of such or similar merchandise in the United States, shall be used.

(c) *Use of constructed value.* If such or similar merchandise is not produced in a non-state-controlled-economy country which is concluded to be comparable in terms of economic development to the state-controlled-economy country from which the merchandise is exported, the constructed value of such or similar merchandise may be determined from the costs of specific objective components or factors of production incurred in producing the merchandise in question, including, but not limited to, hours of labor required, quantities of raw materials employed, and amounts of energy consumed, if such information is obtained from the producer of the merchandise in the state-controlled-economy country under investigation, and verification of such information in the state-controlled-economy country is concluded to the satisfaction of the Secretary. Such components or factors shall be valued and such values verified in a non-state-controlled-economy country determined to be reasonably comparable in economic development to the state-controlled-economy country under investigation. To the values thus obtained, there shall be added an amount for general expenses and profits, as required by section 206(a)(2) of the act (19 U.S.C. 165(a)(2)), and the cost of all containers and coverings and other expenses, as required by secton 206(a)(3) of the act (19 U.S.C. 165(a)(2)).

* * * * *

2. Paragraph (a)(3)(i-iii) of § 153.27 is amended by deleting subdivision (iii) and revising subdivision (i) and (ii) to read as follows:

§ 153.27 Suspected dumping; nature of information to be made available.

(a) *General.* * * *

(3) Price information; fair value.

(i) If the merchandise is being exported from a country other than one considered to be a "state-controlled-economy country" within the meaning of section 205(c) of the act (19 U.S.C. 164(c)):

(A) The home market price of such or similar merchandise in the country of exportation;

(B) If such information is unavailable, the price at which such or similar merchandise is sold to a third country from the country of exportation; or

(C) If the information required under section (a)(3)(i)(A) or (a)(3)(i)(B) is unavailable, the constructed value (as defined in section 206 of the act (19 U.S.C. 165)) of such merchandise produced in the country of exportation.

(ii) If the merchandise is being exported from a country considered to be a "state-controlled-economy country":

(A) The price or prices at which such or similar merchandise of a non-state-controlled-economy country or countries, considered to be comparable in terms of economic development to the state-controlled-economy country, is sold for consumption in the home market of that country or countries or to other countries (including the United States);

(B) The constructed value of such or similar merchandise in a non-state-controlled-economy country, determined in accordance with §§ 153.7 (b) and (c).

(iii) [Deleted]

* * * * *

(Sec. 201-212, 407, 42 Stat. 11 et seq., as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18 (5 U.S.C. 301, 19 U.S.C. 160-173).)

[FR Doc. 78-22177 Filed 8-8-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-563]

PART 280—MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

Prevention of Storage Near Heat-Producing Appliances

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: This interim rule amends § 280.709(c) by establishing more specific requirements governing clearance and storage areas around heat-produc-

ing appliances in mobile homes. The amendment is necessary to assure that the purpose of the original § 280.709(c) is achieved. The interim rule will reduce the potential for fire hazards which could result from the storage of combustible materials near heat-producing appliances.

DATES: (1) This interim rule takes effect on September 1, 1978, and remains in effect through December 31, 1978, unless amended before that date. (2) Comments on this interim rule must be received on or before October 1, 1978. To the extent practicable, the Department will consider comments received after that date.

ADDRESSES: Comments must be addressed to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Richard A. Mendlen, Chief, Standards Branch, Mobile Home Standards Division, Office of Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone 202-472-4710.

SUPPLEMENTAL INFORMATION: This interim rule amends § 280.709(c) of the Federal standards. Before this amendment, that section stated:

(c) Clearances between heat-producing appliances and adjacent surfaces shall not be less than specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified.

The Department is issuing this interim rule primarily as a result of comments received from mobile home manufacturers after the issuance of Interpretative Bulletin H-1-78 on February 1, 1978. That Interpretative Bulletin made it clear that since the purpose of § 280.709(c) was to prevent fire hazards, framing or guarding must be done with noncombustible materials, and that a space surrounding a heat-producing appliance will be considered to be a storage space for which framing or guarding must be provided when the distance from the appliance to the next adjacent surface or other appliance exceeds three inches.

In their comments on Interpretative Bulletin H-1-78, manufacturers argued that § 280.709(c) may not achieve the purpose of preventing storage near heat-producing appliances because any installed barrier or guard around the appliance must be easily removable so that the appliance is accessible for maintenance or replacement. The manufacturers argued that it was unlikely that a consumer, after having removed this guard to service the appliance, would replace it after service was completed. They also pointed out that the ease with which the barrier could be removed would encourage consumers to remove the barrier for aesthetic purposes, particularly when the appliance was exposed to the living area of the mobile home. Further, they demonstrated that the requirements of Interpretative Bulletin H-1-78 may conflict with the clearance requirements of some appliance listings.

Based on these arguments, the Department concluded that an alternative to guarding or framing-in should be provided. That alternative is to permit manufacturers to place a warning label in any compartments or areas in which heat-producing appliances are installed rather than guarding or framing-in the clearance space. That label would warn the consumer not to store materials near the heat-producing appliances since such storage could cause a fire hazard.

One manufacturer argued that since he knew of no history of fires in this area, this requirement was unnecessary. However, according to the National Fire Protection Control Administration (NFPCA),

Heating caused fires are more difficult to characterize since they result from a number of different problems. Some of the heating fires are caused by parts failures or breaks of the central heating unit, while others are caused by combustibles being stored too close to the heating unit, or materials (such as gasoline or combustible cleaning fluids) being too close to the controlled (normal) flames of heating units. Ignition of combustibles too close to the heating units could be reduced through public fire protection education programs that inform the public of the hazards caused from these practices.

Based upon the above considerations, the Department disagrees with the assertion that the requirement is unnecessary.

This requirement applies regardless of whether the compartment in which the heat-producing appliance is installed is accessible from the interior or the exterior of the mobile home. Under the interim rule, unless the warning label is provided, heat-producing appliances must be guarded or framed-in such that the outer boundaries of potential storage spaces around the appliances are no more than three inches from the appliance. However, where the listing of the appliance requires a clearance greater than three inches, the guarding or framing may not be within the clearance required by the listing. This requirement does not apply to spaces designed exclusively for a clothes washer and dryer.

Because there may be a conflict with appliance listing requirements under the current standard, because the current requirement may not be accomplishing its safety related purpose, and because this amendment serves primarily to clarify the safety aspect of the standard without increasing requirements on mobile home manufacturers, the Secretary has determined that it would be unnecessary and contrary to the public interest to publish this Interim Rule for public comment before having it take effect temporarily. Good cause exists for making this Interim Rule temporarily effective on September 1, 1978.

Finally, the Department is planning to do simulated furnace fire research during Fiscal Year 1979 which will also address the issue of furnace enclosures.

A Finding of Inapplicability of Section 102(2) of the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. It is available for public inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, during normal business hours.

This Interim Rule is being signed by two Assistant Secretaries because the standards were originally codified in the FEDERAL REGISTER Chapter assigned the Assistant Secretary for Housing Production and Mortgage Credit-FHA Commissioner, but the substantive authority for the program has been transferred to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

Accordingly, 24 CFR 280.709(c) is amended to read as follows:

§ 280.709 Installation of appliances.

* * * * *

(c) Clearances surrounding heat producing appliances shall not be less than the clearances specified in the terms of their listings.

(1) Prevention of storage. The area surrounding heat producing appliances installed in areas with interior or exterior access shall be framed-in or guarded with noncombustible material such that the distance from the appliance to the framing or guarding material is not greater than three inches unless the appliance is installed in compliance with paragraph (c)(2), of this section. When clearance required by the listing is greater than three inches, the guard or frame shall not be closer to the appliance than the distance provided in the listing.

(2) Clearance spaces surrounding heat producing appliances are not required to be framed-in or guarded when:

(i) A space is designed specifically for a clothes washer or dryer;

(ii) Dimensions surrounding the appliance do not exceed three inches; or

(iii) The manufacturer affixes either to a side of an alcove or compartment containing the appliance, or to the appliance itself, in a clearly visible location, a 3"x 5" adhesive backed plastic laminated label or the equivalent which reads as follows:

"WARNING"

This compartment is not to be used as a storage area. Storage of combustible materials or containers on or near any appliance in this compartment may create a fire hazard. Do not store such materials or containers in this compartment.

(3) This prargraph (§ 280.709(c)) shall be in effect through September 30, 1978, unless amended before that date.

(Secs. 604, 625 of the National Mobile Home Construction and Safety Standards Act of 1974, U.S.C. 5403 and 5424, and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Issued at Washington, D.C., on August 2, 1978.

GENO C. BARONI,
Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

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

[FR Doc. 78-22200 Filed 8-8-78; 8:45 am]

[4210-01]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2564]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of West Haven, New Haven 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 city of West Haven, New Haven 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 city of West Haven, Conn.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of West Haven, are available for review at City Hall, 355 Main Street, West Haven, 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 city of West Haven, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West River (Tidal-Long Island Sound).	Derby Ave	12
	Orange Ave	12
Cove River	Fresh Meadow Rd	133
	Coleman St	72
	Voss Rd	59
	Main St	12
	Ocean Ave	12
Club Creek	David St	130
	Locust St	12
Old Field Creek (Tidal-Long Island Sound).	Peck St	12
	Beach St	12
Jones Hill Road Brook.	Hubbard Ave	45
	Brook Lane	33
	Ocean Ave	12

(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. 78-21890 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-2979]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Durham, Durham County, N.C.

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 Durham, Durham County, N.C. 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 Durham, Durham County, N.C.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Durham, Durham County, N.C., are available for review at the Department of Transportation and Utilities, New City Hall, Durham, N.C.

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 Durham, Durham County, N.C.

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 part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Eno River	Just upstream of U.S. Highway 501.	291
	Just upstream of Guess Rd.	313
Crooked Creek	Just upstream of SR 1448 (Infinity Rd.).	316
Eno River, Tributary Z.	Just upstream of Rivermont Dr.	361
	Just upstream of Cole Mill Rd.	417
Eno River, Tributary A.	Just upstream of Foxhunt St.	292
Eno River, Tributary I.	Just upstream of SR 1656 (Hebron St.).	287
	Just upstream of SR 1648.	314
Warren Creek	Just downstream of Horton St.	308
Warren Creek, Tributary A.	Just downstream of Crystal Lake Rd.	354
	Just downstream of Hillandale Rd.	379
Warren Creek, Tributary B.	Just upstream of Guess Rd.	312
Ellerbe Creek	Just downstream of East Club Blvd.	287
	Just upstream of Duke St.	323
	Just upstream of Hillandale Rd.	361
Ellerbe Creek, Tributary A.	Just upstream of Bluefield St.	305
Ellerbe Creek, Tributary B.	Just downstream of Dearborn Dr.	296
South Ellerbe Creek.	Just upstream of Markham Ave.	320
South Ellerbe Creek Tributary.	Just upstream of Washington St.	313
	Approximately 370 ft upstream of Guess Rd.	349
Goose Creek	Just upstream of U.S. Highway 15.	302
	Just upstream of Juniper St.	328
Goose Creek, Tributary A.	Just downstream of Cheek Rd.	312
	Just upstream of Miami Blvd.	336
Little Lick Creek	Just upstream of North Carolina 98.	293
Little Lick Creek, Tributary 1A.	Just upstream of Clayton Rd.	298
	Just downstream of Chandler Rd.	313
Little Lick Creek, Tributary 2.	Just upstream of Lynn Rd.	309
New Hope Creek	Just upstream of Chapel Hill Rd.	251
	Just upstream of U.S. Highway 15-501.	258
New Hope Creek, Tributary 1.	Just downstream of western extraterritorial corporate limits.	261
Mud Creek	Just downstream of Pickett Rd.	264
	Just downstream of Erwin Rd.	283
Third Fork Creek	Just upstream of North Carolina 54.	251
	Just upstream of Cornwallis Rd.	282
	Just upstream of Forest Hills Boulevard South.	301
Third Fork Creek, Tributary A.	Just downstream of Massey Rd.	259
Third Fork Creek, Tributary C.	Just upstream of Hope Valley Rd.	259
	Just upstream of Buckingham Rd.	287
Third Fork Creek, Tributary D.	Approximately 1,500 ft upstream of confluence with Third Fork Creek.	257
Third Fork Creek, Tributary E.	Just downstream of Roxboro Rd.	291
Rocky Creek	Just downstream of Elmira St.	289
	Approximately 200 ft upstream of Bacon St.	311
Sandy Creek	Just upstream of Garrett Rd.	256
	Just upstream of Cornwallis Rd.	285
	Just upstream of North Carolina 751.	312
Sandy Creek, Tributary A.	Approximately 1,850 ft upstream of Garrett Rd.	259
Sandy Creek, Tributary D.	Just downstream of North Carolina State Route 751.	299
Northeast Creek, North Prong.	Just upstream of Cornwallis Rd.	291
	Just downstream of North Carolina 55.	316
Northeast Creek, North Prong, Tributary A.	Just upstream of Cornwallis Rd.	322
	Just upstream of Alfred St.	337

(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. 78-21899 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-3511]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Sioux Falls, Minnehaha County, S. Dak.

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 Sioux Falls, Minnehaha County, S. Dak. 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 Sioux Falls, Minnehaha County, S. Dak.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Sioux Falls, Minnehaha County, S. Dak., are available for review at the Commissioner's Chambers, City Hall, 224 West 9th Street, Sioux Falls, S. Dak.

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 Sioux Falls, Minnehaha County, S. Dak.

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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Sioux River	U.S. Route 16	1,293
	Cherry Rock Rd	1,399
	Western Ave	1,410
	Madison St	1,419
Big Sioux River Diversion Channel.	U.S. Route 77	1,421
	Minnesota Ave	1,430
Skunk Creek	Interstate 29	1,420
	State Route 16	1,432

(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 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21901 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-3793]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Iowa County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Iowa County, Wis. 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 Iowa County, Wis.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Iowa County, Wis., are available for review at Iowa County Courthouse, Dodgeville, Wis.

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 Iowa County, Wis.

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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Blue Mounds Branch.	State Trunk Highway 39*.	835
	Moscow Rd.*	826
	State Trunk Highway 78	821
Dodge Branch	County Trunk Highway W*.	894
	Private drive	876
	Banner Rd.*	873
Mineral Point Branch.	Mill Creek Rd.*	991
	Eckles Dam**	937
	U.S. Highway 39	914
	North Oak Park Rd.**	884
	State Trunk Highway 151.	869
Wisconsin River	Chicago, Milwaukee, St. Paul & Pacific RR.**.	717
	U.S. Highway 14	717
	State Trunk Highway 23	714
	State Trunk Highways 130 and 133.	702
	Chicago, Milkwaukee, St. Paul & Pacific RR.*.	697
Morrey Creek	Sand Hill Rd.*	753
	Meadow Brook Rd.**	739
	Private Rd.**	722
	Old 80 Rd.*	711
	Chicago, Milwaukee, St. Paul & Pacific RR.**.	701
Otter Creek	Spring Valley Rd	745
	Private drive at station*** 9.44.	739
	Private drive at station 7.71.	730
	County Trunk Highway I.	722
	State Trunk Highway 130**.	716
	County Trunk Highway C*.	711
Lowery Creek	Private drive at station 4.91*.	784
	County Trunk Highway Z**.	758
	County Trunk Highway T*.	726
	State Trunk Highway 23*.	723
	County Trunk Highway C*.	713
Tributary to Lowery Creek.	Private drive at station 2.348*.	791
	Hillside School Rd	757
	State Trunk Highway 23*.	725
Mill Creek	Evans Quarry Rd.*	872
	Dam No. 12**	846
	Rosy Lane**	801
	Korback Rd.*	778
	Mill Rd.**	759
	Baker Rd	739
	Coon Rock Rd.**	722
Trout Creek	Oak Rd*	864
	County Trunk Highway T at station 2.11**.	780
	County Trunk Highway T at station 1.211.	767
	Mill Rd	763
Blue Mounds Creek.	County Trunk Highway K*.	750
	Sawle Rd.**	742
	State Trunk Highway 14	741
Black Earth Creek	Berlin Rd.*	744
	Blynn Rd.*	741
East Branch Blue Mounds Creek.	Old Reeves Rd	755
West Branch Blue Mounds Creek.	County Trunk Highway K.	890
	Mounds Park Rd	849
	Swettler Rd	787
	Richardson Rd	779
	Turnell Rd.**	769
	County Trunk Highway KK**.	757
Tributary to West Branch Blue Mounds Creek.	Pinnacle Rd.*	806
	Private Dr.*	802
	County Trunk Highway K*.	797

* Downstream side.
** Upstream side.
*** Station refers to stream distance in miles upstream of mouth.

(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. 78-21905 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-3817]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Sonoma, Sonoma 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 Sonoma, Sonoma 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 Sonoma, Calif.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Sonoma, Sonoma County, Calif., are available for review at City Hall, Sonoma, 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 Sonoma, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sonoma Creek	Confluence with Dowdell Creek.	58
	Riverside Dr	75
Nathanson Creek	Napa Rd	51
	East MacArthur St	68
	Patten St	79
	Sebastiani Bridge	96
Fryer Creek	MacArthur St. (upstream side).	64
	Andrieux St	68

(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 17, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21887 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-3823]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Silver Plume, Clear Creek County, Colo.

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 Silver Plume, Clear Creek 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 the town of Silver Plume, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Silver Plume, are available for review at Town Hall, Silver Plume, Colo.

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 Silver Plume, 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, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clear Creek	U.S. Interstate 70 (upstream side).	9095
	Cherokee St	9108
	Woodward Ave	9114
	Garland St	9123

(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 11, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21889 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-3942]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the village of Northbrook, Cook County, Ill.

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 Northbrook, Cook County, Ill. 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 Northbrook, Ill.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Northbrook, Cook County, Ill., are available for review at Village Hall, Northbrook, Ill.

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 Northbrook, Ill.

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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Techny Drain	At Second St	648
	At Greenview Rd	656
Techny Drain	Downstream side of Mayapple La.	658
	Upstream side of Mayapple La.	661
	At Fox Glove Dr	664
	Upstream side of Pfingston Rd.	671
South Fork Techny Drain.	At Greenview Rd	656
	At Elm Ridge Dr	662
	Intersection of Woodland Dr. and Wood Dr.	665
Underwriters Tributary.	At Underwriters Lab Rd.	655
	At Greenwood Rd	658
	At Pfingston Rd	663
	At Helen Rd	666
Middle Fork of the North Branch of the Chicago River.	At Sunset Ridge Rd	638
	At Chicago Northwestern RR.	643
	At Shermer Rd	645
	At I-94	647
	At Lake Cook Rd	650
West Fork of the North Branch of the Chicago River.	At Illinois St	639
	At Walters Ave	641
	At Shermer Ave	643
	At Cherry St	645
	At Dundee Rd	648
	At I-94	653

(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. 78-21893 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4007]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Haysi, Dickenson County, 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 Haysi, Dickenson County, 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 Haysi, Dickenson County, Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Haysi, Dickenson County, Va., are available for review at the town hall, Main Street, Haysi, 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 town of Haysi, Dickenson County, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Russell Prater Creek.	Upstream corporate limits.	1,322
	Private bridge (4,675 ft upstream of mouth).	1,306
	Private bridge (4,225 ft upstream of mouth).	1,303
	Private bridge (3,950 ft upstream of mouth).	1,297
	Private bridge (2,100 ft upstream of mouth).	1,279
	Routes 80 and 83	1,266
	Confluence with Russell Fork.	1,266
McClure River	Upstream corporate limits.	1,273

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
McClure River	Route 725	1,265
	Clinchfield RR	1,265
	Confluence with Russell Fork.	1,264
Russell Fork	Upstream corporate limits.	1,271
	Route 83	1,269
	Clinchfield RR	1,266
	Confluence of the Russell Prater Creek.	1,266
	Confluence of the McClure River.	1,264
	Route 63	1,264

(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 27, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21904 Filed8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4046]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Saratoga, 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 Saratoga, 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 Saratoga, Calif.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Saratoga, Santa Clara County, Calif., are available for review at the Office of the Director of Public Works, 13777 Fruitvale Avenue, Saratoga, 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 Saratoga, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Calabazas Creek	Rainbow Ave	273
	Prospect Rd	302
	Southern Pacific RR	320
	Wardell Rd	343
San Tomas Aquino Creek.	Quito Rd., approximately 1,380 ft above Pollard Rd.	314
	Montclair Rd	354
	Avon Lane	389
	Twin Creeks Rd	410
	Quito Road, 1,300 ft above Twin Creek Rd.	430
Saratoga Creek	Via Real Dr	320
	Crestbrook Dr	348
	Herriman Ave	382
	4th St	472
	Ambric Knolls Rd	512
Wildcat Creek	Portos Dr	327
	Fruitvale Ave	370
	Douglass Lane	430
	Private drive, 2,300 ft Upstream of Douglass Lane.	491

(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. 78-21886 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4057]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Los Gatos, 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 town of Los Gatos, 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 town of Los Gatos, Calif.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Los Gatos, Santa Clara County, Calif., are available for review at Office of the Town Engineer, Town Hall, 110 East Main Street, Los Gatos, 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 the town of Los Gatos, 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 in-

dividuals 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Los Gatos Creek	Lark Ave	269
	Downstream side of Vasona Dam.	279
	Upstream side of Vasona Dam.	299
	Park Rd	301
	Roberts Rd	320
San Tomas Aquino Creek.	Quito Rd., 1,300 ft above Pollard Rd.	314
	Montclair Rd	354
	Private road at the Las Gatos-Monte Sereno corporate limits.	372
Smith Creek	South Pacific RR	249
	Wedgewood Ave	265
	Smith Creek Dr	305

(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. 78-21885 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4064]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Glen Ellyn, DuPage County, Ill.

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 Glen Ellyn, DuPage County, Ill. 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 Glen Ellyn, DuPage County, Ill.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Glen Ellyn, DuPage County, Ill., are available for review at the Office of Public Works, 535 Duane Street, Glen Ellyn, Ill.

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 Glen Ellyn, DuPage County, Ill.

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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch	Corporate limits at Roosevelt Rd.	685
DuPage River	State Route 53	687
	Corporate limits upstream of Route 53.	688

(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. 78-21892 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4066]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Harlan, Harlan 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 Harlan, Harlan 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 Harlan, Harlan County, Ky.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Harlan, Harlan County, Ky., are available for review at the city hall, Harlan, Ky.

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 Harlan, Harlan 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clover Fork	Corporate limits (Downstream).	1,178
	Main Street	1,182
	Walnut Street	1,184
	Corporate limits (Upstream).	1,187
Martins Fork	Confluence with Clover Fork.	1,181
	Corporate limits	1,181

(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 27, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21894 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4073]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Hinsdale, Cattaraugus 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 Hinsdale, Cattaraugus 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 Hinsdale, Cattaraugus 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 Hinsdale, Cattaraugus County, N.Y., are available for review at the office of the Town Supervisor, Hinsdale, 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 town of Hinsdale, Cattaraugus 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Olean Creek	Dutch Hill Rd	1,451
	Fay Hollow Rd	1,443
Ischua Creek	Davis Rd	1,470
	Mills St	1,458
	U.S. Route 17	1,452
Oil Creek	Underwood Rd	1,462
	U.S. Route 17	1,455
	State Route 16	1,452

(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 27, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21898 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4087]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Durango, La Plata County, Colo.

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 Durango, La Plata 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 the city of Durango, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Durango, are available for review at the Office of the City Planner, 965½ Main Avenue, Durango, Colo.

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 Durango, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Animas River	Old U.S. Highway 160**.	6,484
	Old U.S. Highway 160*...	6,485
	Main Ave. (U.S. Highway 550)**.	6,504
	Main Ave. (U.S. Highway 550)*.	6,509
	Denver & Rio Grande Western RR.	6,513
	32nd St.**	6,540
	32nd St.*	6,542
Dry Gulch Creek	Columbine Ave	6,603
	Borrego Dr.**	6,683
	Borrego Dr.*	6,688
Junction Creek	Denver & Rio Grande Western RR**.	6,520
	Denver & Rio Grande Western RR*.	6,526
	West 2nd Ave. Bridge**	6,568
	West 2nd Ave. Bridge*	6,569
	Clovis Dr. Bridge**	6,623
	Clovis Dr. Bridge*	6,627

*Upstream side.
**Downstream 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 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21888 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4090]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Little Creek, Kent County, Del.

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 Little Creek, Kent County, Del. 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 Little Creek, Del.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Little Creek, are available for review at Post Office, Little Creek, Del.

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 Little Creek, Del.

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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Delaware Bay	Intersection of Lowe St. and Main St.	9

(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 17, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21891 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4095]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Grand Rapids, Kent 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 Grand Rapids, Kent 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 Grand Rapids, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Grand Rapids, are available for review at City Hall, 300 Monroe Avenue, Grand Rapids, 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 Grand Rapids, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Grand River	North Park St.*	619
	Ann St.**	617
	6th St.*	615
	Bridge St.*	611
	ConRail*	609
	Interstate Highway 296**.	607
	New York Central RR*	606
Plaster Creek	Corporate limits at station 45700*.	678
	Kalamazoo Ave.*	672
	Kalamazoo Ave.**	671
	Eastern Ave.*	660
	Madison St.*	650
	Buchanon St.*	640
	Kirkland Ave.*	630
	Burton St.*	627
	Chicago Dr.*	616
	Market St.*	608

*Upstream side.
**Downstream 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 20, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21895 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4099]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Zilwaukee, Saginaw 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 township of Zilwaukee, Saginaw 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 township of Zilwaukee, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of Zilwaukee, are available for review at the home of the township Supervisor, 7600 Melbourne Road, Saginaw, 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 township of Zilwaukee, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Saginaw River	Downstream corporate limit.	586
	Interstate Highway 75	588

(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 17, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21896 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4108]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Robinson, McLennan County, Tex.

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 Robinson, McLennan County, Tex. 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 Robinson, McLennan County, Tex.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Robinson, McLennan County, Tex., are available for review at the City Hall, 104 West Glendale Street, Waco, Tex. 76706.

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 Robinson, McLennan County, Tex.

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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Flat Creek	Just upstream of 12th Street (County Road 102).	427
	Just upstream of U.S. 77	461

(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., 78-21902 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4134]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Dinwiddie County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Dinwiddie County, 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 Dinwiddie County, Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Dinwiddie County, Va., are available for review at the office of the County Administrator, Dinwiddie County, 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 Dinwiddie County, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, above mean sea level
Reedy Creek	At upper Appomattox Canal.	110
	Upsteam side of Norfolk and Western RR. crossing.	114
	Upstream side of State Route 600 crossing.	117
	Upstream side of telephone line crossing.	122

(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 27, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21903 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4146]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Greenwood, 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 Greenwood, 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 Greenwood, 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 Greenwood, Jackson County, Mo. are available for review at City Hall, Highway 150 and Spruce Street, Greenwood, 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 Greenwood, 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Creek	Southern corporate limits.	878
	Approximately 100 ft. upstream of Missouri Route 150.	907
	Just downstream of Ranson Rd.	920

(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. 78-21897 Filed 8-8-78; 8:45 am]

[4210-01]

[Docket No. FI-4158]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Sandusky County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Sandusky 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 Sandusky County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Sandusky County, Ohio, are available for review at the County Courthouse, 100 Park Avenue, Fremont, 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 Sandusky 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 Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sandusky River	Confluence of Little Bark Creek.	580
	Ohio Turnpike	583
	Confluence of Muskellunge Creek.	584
	U.S. Route 20	586
	Downstream corporate limits of Fremont..	587
	Upstream corporate limits of Fremont.	593
	Tiffin Rd.	604
Sandusky Bay	Intersection of Vineyard Rd and Bay Blvd.	577
	Grant St. in Bay View	577

(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 27, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-21900 Filed 8-8-78; 8:45 am]

[4310-02]

Title 25—Indians

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

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 258—INDIAN FISHING—HOOPA INDIAN RESERVATION

In-Season Adjustment

AGENCY: Department of the Interior.

ACTION: Notice of in-season adjustment.

SUMMARY: The rules governing Indian fishing on the Hoopa Indian Reservation were promulgated on July 7, 1978 and published in the FEDERAL REGISTER July 13, 1978. This document makes in-season adjustments in fishing times for the weeks of August 6, 1978 and August 13, 1978 under § 258.12 In-season and emergency regulations. The document is in response to a request by Indians for a five-day fishery for commercial taking of chinook salmon.

DATES: See supplementary information below.

FOR FURTHER INFORMATION CONTACT:

Susan Hvalsoe, Special Assistant to the Assistant Secretary for Indian Affairs, Department of the Interior, Washington, D.C. 20240, 202-343-3163.

SUPPLEMENTARY INFORMATION: This in-season adjustment changes fishing times for the week of August 6, 1978, and the week of August 13, 1978, under § 258.12—In-season and Emergency Regulations, of the regulations issued on July 7, 1978 (43 FR 30047).

The rules governing Indian fishing on the Hoopa Indian Reservation were promulgated on July 7, 1978, and published in the FEDERAL REGISTER on July 13, 1978. Under these rules Indian fishing during the fall chinook salmon fishing season is allowed on the Klamath River below the Highway 101 bridge for 2 days per week, 10 hours per day. Fishing is allowed on the Klamath River above the highway 101 bridge, and on the Trinity River, within the Reservation, for 4 days per week, 10 hours per day.

Indians of the reservation have requested a 5-day fishery for commercial taking of chinook salmon. This can only be allowed if the number of hours fished each day is substantially reduced to assure adequate escapement of fish through the lower river fisheries to upriver fisheries, and through all fisheries for spawning. If the amount of fishing effort and fish catch are reported daily, so that analyses can be made to allow for escapement and conservation needs a change in regulations could be permitted such

as a 5-day fishery which is limited to four hours of fishing each night. Bureau of Indian Affairs has determined that compliance with such a change is probable. In order to assess the run size and accuracy of fishing effort and catch reporting, and allow comments on this in-season adjustment and the entire regulations, the in-season adjustment will be tested on an interim basis for a ten-day period of time.

It is not the intent of these in-season adjustments to dictate or set limitations on sport fishery of the Klamath River basin. It is our understanding that California Department of Natural Resources plans to make adjustments in the sports fishery based on harvest data as discussed with this department.

It is therefore ordered, That Indian fishing on days prescribed under 25 CFR 258.11 on the Hoopa Indian Reservation are hereby subject to an in-season adjustment changing the permissible fishing days to allow on-reservation fishing below the Highway 101 bridge by eligible Indians from 8 p.m. to 12 midnight, with all boats off the rivers by 1 a.m., on the nights of:

August 7, 1978; August 8, 1978; August 9, 1978; August 10, 1978; August 11, 1978; August 14, 1978; August 15, 1978; August 16, 1978; August 17, 1978; and August 18, 1978.

All fish landed must be cleared through a single check station at a point established by the Fish and Wildlife Service for the area below the bridge.

The hours or days of fishing for the area above the Highway 101 bridge are unaffected by the change except that all fish landed must be cleared through a single check station at a point established by the Fish and Wildlife Service above the bridge.

If all parts of the regulations are not met, or if reporting of fishing effort and catch is not adequate, or if there is an accident or new information causing substantial concern for conservation of the fish run, this in-season adjustment may be modified up to and including closing of the fishery.

Notice of this order is provided to local newspapers and posted at pertinent places on the Hoopa Indian Reservation. It shall also be published in the FEDERAL REGISTER forthwith.

Dated: August 4, 1978.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc. 78-22348 Filed 8-8-78; 8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7557]

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

Reinstatement of Form 958

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains an amendment to the Income Tax Regulations relating to the requirement that specified individuals file a return with respect to income of certain foreign corporations. The amendment affects those persons who, on the date specified, are officers or directors of a foreign personal holding company. This document also provides guidance to those persons who failed to file the return for certain taxable years.

DATE: The amendment is effective for taxable years ending on or after December 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Ms. Benedetta A. Kissel, of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-4454, not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains an amendment to the Income Tax Regulations (26 CFR part 1) that conforms the regulations to section 6035(a)(2) of the Internal Revenue Code of 1954. The amendment is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Section 6035(a)(2) of the Internal Revenue Code requires certain individuals to file a return with respect to income of a foreign personal holding company. In its effort to ease the public's reporting burden by discontinuing certain forms, the Service inadvertently eliminated from § 1.6035-1(a)(2) the requirement of filing the section 6035(a)(2) return. This amendment corrects the resultant inconsistency between the Internal Revenue Code and the Income Tax Regulations by restoring the filing requirement to § 1.6035-1(a)(2).

Since this amendment merely corrects the regulations to conform to existing statutory requirements, it is not necessary to publish it with notice of proposed rulemaking.

This document also contains an extension of time for filing the return required under section 6035(a)(2). The extension is issued under the authority contained in section 6081 of the Internal Revenue Code of 1954 (68A Stat. 751; 26 U.S.C. 6081).

DRAFTING INFORMATION

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

WAIVER OF CERTAIN PROCEDURAL REQUIREMENTS, OF PROPOSED TREASURY DIRECTIVE

A determination has been made by one of the undersigned, Jerome Kurtz, Commissioner of Internal Revenue, that there is an immediate need for amendment of the regulations under section 6035(a)(2) in order to conform those regulations to statutory requirements. Because of the immediate need for such amendment, compliance with the procedural requirements of paragraphs 8 through 13 of the proposed Treasury directive (43 FR 22319), relating to improving regulations, would be impracticable and, therefore, these requirements have not been followed.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR part 1 is amended as follows:

§ 1.6035-1 [Amended]

Section 1.6035-1(a)(2) is amended by striking "and ending before December 31, 1977,".

The time for filing Form 958 for taxable years ending on or after December 31, 1977, and before August 9, 1978, is hereby extended to the earlier of—

1. September 29, 1978, or

2. That day which is 6 months after the due date of the return under section 6035(a)(2) determined without regard to any extensions which may have been granted.

The provisions of this Treasury decision merely correct the regulations to conform to existing statutory requirements and grant an extension of time for filing Form 958 for certain taxable years. For this reason, it is unnecessary to issue it with notice and public

procedure under subsection (b) of section 553, Title 5 of the United States Code, or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and in section 6081 of the Internal Revenue Code of 1954 (68A Stat. 751; 26 U.S.C. 6081).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: August 4, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

[FR Doc. 78-22230 Filed 8-4-78; 4:26 pm]

[7910-01]

Title 32—National Defense

CHAPTER XIV—THE RENEGOTIATION BOARD

SUBCHAPTER B—THE RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1466—TERMINATION OF RENEGOTIATION

Technical Amendment

AGENCY: The Renegotiation Board.

ACTION: Final rule; correction of "termination date."

SUMMARY: The Renegotiation Board is amending its regulation dealing with the filing of financial statements for fiscal years that include the "termination date" for renegotiation coverage under the Renegotiation Act of 1951, as amended, to reflect the correct "termination date", namely September 30, 1976. Since filings for such fiscal years are being required of contractors, the Board believes a correction of the "termination date" is necessary.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, Renegotiation Board, 2000 M Street NW., Washington, D.C. 20446, telephone 202-254-8277.

SUPPLEMENTAL INFORMATION: Pub. L. 94-185, 89 Stat. 1061 (1975), changed the "termination date" for renegotiation coverage in § 102(c) of the act (50 U.S.C. App. 1212(c)) from December 31, 1975 to "September 30, 1976". Inadvertently, §§ 1466.1 and 1466.2 of the Renegotiation Board Regulations, 32 CFR §§ 1466.1 and 1466.2, have not heretofore been revised to reflect the correct "termination date" in conformance with the most recent extension of the act.

Since this amendment is wholly technical in nature, the usual public rulemaking procedures are unnecessary. The Board has also determined that this is not a significant amendment within the meaning of Executive Order 12044 (March 23, 1978).

In consideration of the foregoing, 32 CFR Part 1466 is amended as follows:

§ 1466.1 [Amended]

1. Section 1466.1 Statutory provision is amended by deleting "December 31, 1975" in the last sentence of paragraph (c)(1) and inserting in lieu thereof "September 30, 1976."

§ 1466.2 [Amended]

2. Section 1466.2 Definition of "termination date" is amended by deleting "December 31, 1975" and inserting in lieu thereof "September 30, 1976."

(Section 109, 65 Stat. 22; 50 U.S.C. App. Sec. 1219.)

Dated August 4, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[FR Doc. 78-22209 Filed 8-8-78; 8:45 am]

[8320-01]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

EDUCATIONAL ASSISTANCE BENEFITS

Vocational Rehabilitation Under 38 U.S.C. Chapter 31; Veterans' Educational Assistance Under 38 U.S.C. Chapter 34; Survivors' and Dependents, Educational Assistance Under Chapter 35; Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36; Education Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The following regulatory provisions, implementing the Veterans' Education and Employment Assistance Act of 1976, provide for increases in monthly rates and other significant changes in the educational assistance and vocational rehabilitation programs. Some of the changes are liberalizing and some are restrictive, while others codify policies and practices already in use. Additional changes are of a minor or technical nature. The effect of this change is to implement this law.

EFFECTIVE DATES: October 1, 1976: Rate increases, increased basic entitlement, various provisions affecting the determination and extension of delimiting periods under chapter 35, reimbursement to State approving agencies for work that is subcontracted out, and increase in the reporting fees.

October 15, 1976: Provisions for payment of benefits for certain break periods, completion of work-study contracts when the student ceases to be a full-time student, elimination of the termination dates for chapter 31 trainees for the blinded and seriously disabled service-connected veterans, definitions of "institution of higher learning" and "standard college degree," redesignation of the title of the chapter 35 program and the redesignation of the titles to be used for beneficiaries, permitting inspection of records of all students by authorized Government representatives to administer title 38 education programs, repeal of the requirements as to the Attorney General's list, establishing standards of compliance survey activities by the Veterans Administration, and other minor gender and technical changes not otherwise mentioned in this paragraph.

November 1, 1976: Termination of enrollment and reenrollments in the predischarge education program for chapter 34.

December 1, 1976: Prohibition of payment of benefits for audited courses, no payment of benefits for courses the grades for which do not count toward graduation nor for courses from which withdrawn without mitigating circumstances, correspondence courses or parts of courses by correspondence that are less than 6 months in length barred, new provisions as to barring attorneys-in-fact as addresses for delivery of benefits checks, changes in the 85-15 percent provisions, new provisions for measurement of training in accredited noncollege degree courses, new approval criteria, amendment of the 2 years of operation rule, required retention of advertising, sales and enrollment materials, amended statutory provisions as to standards of progress and conduct, and training of chapter 31 trainees in Federal agencies without pay.

January 1, 1977: Termination of chapter 34 eligibility for those entering on active duty on or after that date (with limited exception for persons in programs such as delayed enlistment program (DEP) and Reserve Officers' Training Corps (ROTC)); provisions of a final cutoff date for chapter 34 of December 31, 1989.

June 1, 1977: Bars to the prepayment of educational benefits, require-

ment that the student specifically request an advance payment (no need requirement), requirement that the school certify it agrees to, and can comply with, the requirements of the advance payment law.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420, 202-389-2092.

SUPPLEMENTARY INFORMATION: On pages 6722 through 6747 of the FEDERAL REGISTER of February 15, 1978 there was published a notice of intent to amend part 21 to implement the Veterans' Education and Employment Assistance Act of 1976.

Interested persons were given 30 days in which to submit comments, suggestions or objections regarding the proposed regulations. Five people submitted comments.

One person commented that the proposed regulations did nothing to implement the GI Bill Improvement Act of 1977. As is indicated in the summary these regulations are only intended to implement the Veterans' Education and Employment Assistance Act of 1976. Regulations to implement the GI Bill Improvement Act of 1977 will be published later.

One person suggested further amending §§ 21.1041 and 21.1042 to allow a veteran to continue to receive benefits until the end of the term in which his or her 10-year delimiting period expires. These regulations are based upon 38 U.S.C. 1662. There is no provision of the law which would allow the Veterans Administration to make the suggested amendments to the regulations.

One person objected to the number of reports necessary to obtain the waivers listed in § 21.4201. We believe, however, that the reports required by the regulation are necessary to implement the provisions of the Veterans' Education and Employment Assistance Act of 1976.

Two persons objected to the proposed amendments to § 21.4135 (s) and (w) stating that the list of mitigating circumstances contained in § 21.4136(k) was so stringent as to make administration of § 21.4135 (s) and (w) inherently unfair. They stated that the proposed amendments should be withdrawn.

The proposed amendments are based upon 38 U.S.C. 1780(a)(4) which prohibits the payment of educational assistance allowance to veterans and other eligible persons for a course for which the grade assigned is not used in computing the requirements for graduation, including a course from which the student withdraws, unless there are mitigating circumstances. To leave § 21.4135 (s) and (w) unamended would mean that the Code of Federal Regulations would require payment while statute would prohibit payment for the same course.

The Veterans Administration realizes that it is impossible to compile an exhaustive list of mitigating circumstances. For this reason the amendment to § 21.4136(k) states that the mitigating circumstances include, but are not limited to those listed in the regulation. This should ensure equitable administration of § 21.4135 (s) and (w).

As a result of our own internal analysis following the first publication of these regulatory changes, the Veterans Administration has determined that some proposed amendments need to be changed. Section 21.1041(d) is corrected to show that the period of entitlement for someone pursuing flight training may be extended to the end of the course or the total additional amount of instruction that $756 will provide, whichever is less. Section 21.4270(b) is corrected to show the correct measurement of one-quarter time or less training. The paragraph dealing with measurement of accredited professional courses has also been amended and two paragraphs added dealing with measuring accredited high school and elementary school courses. Section 21.4251(f) (4) and (5) as first published has been eliminated. Part of this material has been incorporated in § 21.4200(m) and the remainder has been incorporated in § 21.4266. Section 21.4280 is corrected to take into account all possible combinations of independent study and residence training. An amendment to § 21.4233(a) is added and §§ 21.1021, 21.4136(a), 21.4137(a), and 21.4272(f) have been amended in order to change cross-references to § 21.4270. In addition § 21.4503 has been amended to shorten the minimum length of time for which a loan can be granted from 10 weeks to 8 weeks.

The proposed changes to the regulations necessary to implement the provisions of the Veterans' Education and Employment Assistance Act of 1976 are deemed proper and are hereby adopted.

Approved: August 1, 1978.

By direction of the Administrator,

RUFUS H. WILSON,
Deputy Administrator.

1. Sections 21.41 and 21.42 are revised to read as follows:

§ 21.41 Extension of training.

(a) *General.* A veteran may be provided training beyond his or her basic termination date in accordance with dates set forth in § 21.42 when he or she was prevented from timely entering, or having entered, from completing vocational rehabilitation for one of the following reasons:

(1) *Physical or mental condition prevented timely entrance.* His or her physical or mental condition was such as to make training medically infeasible during all or any part of the critical period, as set forth in § 21.42, for qualifying to enter training in order to permit pursuit of a program during the 4-year period immediately preceding his or her basic termination date.

(2) *Physical or mental condition prevented completion.* He or she timely entered training but was prevented from completing his or her planned course because of physical or mental condition and through no fault of his or her own.

(3) *Discharge.* Discharge from service was such as to meet the eligibility requirements for vocational rehabilitation for the first time on or subsequent to the beginning date of the applicable critical period as set forth in § 21.42.

(4) *Service-connected disability.* He or she first established the existence of a service-connected compensable disability on or subsequent to the beginning date of the applicable critical period as set forth in § 21.42.

(5) *Increase in degree of disablement.* Subsequent to the beginning day of his or her critical period he or she has established the existence of an increase in the degree of disabling effect of service-connected disability which warrants a current finding that need for vocational rehabilitation exists and is attributable to the change.

(b) *Seriously disabled (including blinded) veterans.* A veteran who is blinded or otherwise seriously disabled as a result of service-connected disability may be provided training beyond the termination date otherwise applicable if:

(1) He or she has not previously been rehabilitated, or

(2) His or her disability has worsened, or he or she has developed a secondary service-connected condition resulting from service-connected disability after he or she was declared rehabilitated, to the extent that he or she is now precluded from performing the duties of the occupation for which previously trained.

(3) However, a counseling psychologist within the Veterans Services Division must determine that training is necessary based upon the veteran's disability and need for vocational rehabilitation.

(c) *Determination of serious disability.* For purposes of paragraph (b) of this section, serious disability includes:

(1) Service-connected blindness defined as visual acuity no better than 20/200 in the better eye after correction, or a field of vision restricted to an angle of 15 degrees or less.

(2) Service-connected disability evaluated singly or in combination at 50 percent, or more, except convalescent ratings, prestabilization ratings, and ratings based on hospitalization.

(3) Service-connected disability evaluated singly or in combination at 30 percent or 40 percent if, because of such disability, the veteran is unable to get and/or hold competitive employment. Service-connected disabilities evaluated singly or in combination at less than 30 percent do not constitute serious disability.

§ 21.42 Dates of eligibility.

Basic dates			Extension under § 21.41(a) (1) through (5)			Training under § 21.41(b)
(1)	(2)	(3)		(4)	(5)	(6)
Date disability incurred.	Date of discharge[1]	Basic termination date (Last pay date).	If the basic termination date is less than 4 years away or has already passed, consideration should first be given for the 4-year extension and § 21.41(a) (1) through (5). See columns (4) and (5).	Beginning and ending date of critical[2] period § 21.41(a) (1) through (5).	Extended termination date under § 21.41(a) (1) through (5). (Last pay date).	If veteran does not have sufficient training time for completion of rehabilitation by his or her basic termination date or by any applicable extension under § 21.41(a) (1) through (5) and is seriously disabled or blinded as provided in § 21.41 (b) and (c), training after the otherwise applicable termination date shall be provided, or such periods as determined necessary based upon the disability and need for training.
(a) 9-16-40 to 7-25-47.	After 9-15-40	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date[3].	
(b) 7-26-47 to 6-26-50.	Before 10-15-62	10-14-71		7-14-67 to 10-14-67	10-14-75	
	After 10-14-62	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date[3].	
(c) 6-27-50 to 1-31-55	After 6-26-50	9 years after discharge date[4].		4 years and 9 months to 5 years after discharge date.	13 years after discharge date[4].	
(d) After 1-31-55.	Before 10-15-62	10-14-71		7-14-67 to 10-14-67	10-14-75	
	After 10-14-62	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date.	

[1] Date of discharge refer to the first unconditional discharge or release following the period of service in which the disability occurred.

[2] Critical period is the 90-day period immediately preceding the date falling exactly 4 years prior to the veteran's basic termination date. It is a 90-day period which permits the veteran time to complete counseling and select an objective which can be reached within the 4-year period immediately following.

[3] When extended termination date under § 21.41(a) (1) through (5) for these service dates has expired, further extension may only be granted if the veteran qualifies under § 21.41 (b) and (c).

[4] In no case was basic termination date (last pay date) earlier than 8-19-63 or extended termination date earlier than 8-19-67.

2. Section 21.130 is revised to read as follows:

§ 21.130 Subsistence allowance.

(a) *Payments.* Each veteran under chapter 31 will be paid a subsistence allowance at the rates specified in § 21.133. Final payment may be withheld until proof of continued enrollment is received and the account adjusted. Allowance will be paid while the veteran is in training status, including any period during which he or she is on authorized leave.

(1) A veteran is in training status during:

(i) Periods when he or she is in attendance; this includes weekends and legal holidays (or customary vacation periods connected therewith) and, as determined by the Administrator, periods when the schools are temporarily closed under an established policy based upon an Executive order of the President or due to an emergency situation.

(ii) Periods between consecutive terms within an enrollment period that do not exceed 1 full calendar month.

(iii) Periods between consecutive school terms when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in and pursuing a similar course at the second institution, provided the period does not exceed 30 days.

(iv) Periods between a semester, term or quarter where the educational institution certifies the enrollment of the veteran on an individual semester, term or quarter basis, if the interval between such periods does not exceed 1 full calendar month.

(2) A veteran who is on approved leave will continue to be paid subsistence allowance even though he or she is hospitalized; receiving drill pay, flight pay or commuted rations as a member of a Reserve force; or while not on active duty, is receiving service department retirement or retainer pay. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(b) *Restrictions.* A person in training under chapter 31 will not be paid subsistence allowance when:

(1) He or she is hospitalized pending final discharge from active service.

(2) He or she is receiving Veterans Administration hospital or domiciliary care following discharge from service,

except as provided in paragraph (a)(2) of this section. (The veteran is not precluded from receiving subsistence allowance if as a part of his or her training he or she is receiving certain assistance in the day clinic of the hospital but is providing his or her own room and board, either at home or otherwise.)

3. In § 21.131, paragraph (b)(1)(i) is revised to read as follows:

§ 21.131 Commencing dates.

The commencing date of an award or increased award of subsistence allowance will be determined under this section, but will not be authorized for any period prior to the earliest date for which disability compensation is payable, or would be payable except for the receipt of retirement pay.

* * * * *

(b) *Increase for dependent.* Latest of the following dates:

(1) Date of claim: This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

* * * * *

4. In § 21.132, paragraphs (e) and (g) are revised to read as follows:

§ 21.132 Reduction or discontinuance.

The effective date of reduction or discontinuance of subsistence allowance will be the earliest of the dates specified in these paragraphs. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

* * * * *

(e) *"Interrupted", "discontinued", or "rehabilitated".*

(1) *Interrupted and rehabilitated.* Last day of attendance or last day of approved leave status, whichever is applicable.

(2) *Discontinued.* Last date of attendance or leave status whichever is applicable, except as follows:

(i) If the veteran is placed in discontinued status following withdrawal from all courses with nonpunitive grades or following completion of all courses with nonpunitive grades, and mitigating circumstances are not found by the Vocational Rehabilitation Specialist, benefits will be terminated effective the first date of the term or December 1, 1976, whichever is later.

(ii) If the veteran is placed in discontinued status following a term in which grades received include both those which count in grade point average and nonpunitive grades, and mitigating circumstances are not found: Subsistence allowance for courses in which nonpunitive grades were received will be terminated effective the first date of the term or December 1, 1976, whichever is later. Subsistence allowance for courses in which grades which count in grade point average were received will be terminated last date of attendance or leave status, whichever is applicable. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

(g) *Reduction in rate of pursuit of course.* End of month in which reduction occurs, except that if the rate of pursuit is reduced as a result of the veteran's withdrawal from a course or courses with nonpunitive grade(s) or as a result of the completion of a course or courses with nonpunitive grade(s) (§ 21.4200(j)), benefits will be reduced as follows:

(1) If the Vocational Rehabilitation Specialist determines that there are mitigating circumstances:

(i) Withdrawal with nonpunitive grades: The end of the month or the end of the term in which withdrawal occurs, whichever is the earlier, unless the reduction occurs at the beginning of the term, in which case benefits will be reduced the first date of the term in which the withdrawal occurs or December 1, 1976, whichever is the later.

(ii) Completion with nonpunitive grades: No reduction required.

(2) If the Vocational Rehabilitation Specialist determines there are no mitigating circumstances reduction of benefits is effective the first date of the term in which the withdrawal or completion with nonpunitive grades occurs or December 1, 1976, whichever is the later. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

5. Section 21.133 is revised to read as follows:

§ 21.133 Rates.

Subsistence allowance is payable at the following monthly rates effective October 1, 1976.

Type of training	Monthly rate of subsistence allowance			
	No dependents	1 dependent	2 dependents	Each additional dependent
Institutional:				
Full time	$226	$280	$329	$24
¾ time	170	210	247	18
½ time	113	140	165	12
Sheltered workshop, training in the home, independent instructor (full time only)	226	280	329	24
Farm cooperative apprentice or other on job (OJT)[1] (full time only)	197	238	275	18
Combination (institutional and OJT) (full time only):				
Institutional ½ time or more	226	280	329	24
Institutional less than ½ time	197	238	275	18
Cooperative (full time only):				
Institutional full time	226	280	329	24
Business/industry full time	197	238	275	18

[1]For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b); Pub. L. 94-502, 90 Stat. 2383.)

6. In § 21.134, paragraph (c) is revised to read as follows:

§ 21.134 Postrehabilitation pay.

* * * * *

(c) *Farm cooperative, apprentice, or other on-job.* The lump-sum payment will be twice the full-time monthly rate authorized for this kind of training including any additional amounts for dependents. The full-time rate will be the basis for payment without regard to the fact that the veteran may have been authorized less than the maximum subsistence allowance payable because of wages earned while pursuing on-the-job training.

* * * * *

7. In § 21.138, paragraphs (d) and (e) are added to read as follows:

§ 21.138 Advance payment.

* * * * *

(d) *Exception.* Notwithstanding any provision of this section or any other section of Title 38, Code of Federal

Regulations, on and after June 1, 1977, no advance payment of benefits shall be made, unless the individual shall first specifically request such a payment and the educational institution at which the veteran is accepted or enrolled has agreed to, and can satisfactorily, carry out the provisions of 38 U.S.C. 1780(d)(5) (B) and (C) and (6) pertaining to receipt, delivery, or return of advance checks and certifications of delivery and enrollment.

(e) *Time of payment.* Advance payment will only be authorized, at the beginning of an ordinary school year or at the beginning of any other enrollment period which begins after a break in enrollment of 1 full calendar month or longer. Furthermore, on and after June 1, 1977, all other payments shall be made at the end of the month in which the training for which payment is made shall have occurred. These exceptions are required by the provisions of Pub. L. 94-502, 90 Stat. 2383. See § 21.130.

8. In § 21.145, paragraph (a) is revised to read as follows:

§ 21.145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 31 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in the amount of $625 will be paid. An advance payment of $250 will be made for the first 100 hours agreed to be worked. Advances of lesser amounts may be made in return for agreements to perform services for periods of less than 100 hours. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. If the veteran terminates all training he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. Students must complete portions of an agreement within the same or immediately following term, quarter, or semester in which the student ceases to be a full-time student, but in no event later than 60 days after the date the student ceases to be a full-time student. (38 U.S.C. 1685; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

9. In § 21.201, paragraphs (e), (f)(1), (g) (1) and (5), and (b) (1) and (3) and the following portions of paragraph (i): Introductory portion preceding subparagraph (1); in subparagraph (2), the introductory portion preceding subdivision (i) and (2)(ii); in subparagraph (3), the introductory portion preceding subdivision (i), and subdivisions (iv), (v), (vi) and (vii), are revised to read as follows:

§ 21.201 Types of courses.

In prescribing the course for a particular veteran, that type or combination of types will be selected which will make the veteran most satisfactorily employable in his or her selected occupation. The types of courses of vocational rehabilitation are:

* * * * *

(e) *Sheltered workshop course.* A full-time course of training on the job or combination of training on the job and supplemental related instruction. The disabled veteran is provided vocational training in a specific employment objective in a place where he or she is relatively sheltered from competition with the able bodied. He or she is not required to meet production standards which in ordinary on-the-job training situations would interfere with the restoration of employability. The course is provided through a charitable, religious, educational, governmental, or philanthropic organization which is not operated for profit but primarily to provide vocational training, rehabilitation, and employment to the physically and mentally handicapped. A sheltered workshop course is a vocational course of training. It will be strictly differentiated from a course of specialized restorative training offered in a workshop for the purpose of work adjustment or personal adjustment. A sheltered workshop course will be prescribed only in those cases in which the veteran's employability cannot be restored through pursuit of the usual course of vocational training in a school or in a training on-the-job establishment. Training under sheltered workshop conditions should give good promise of needed results not otherwise obtainable in the particular case.

(f) *Correspondence course.* * * *

(1) A correspondence course may be prescribed as part of the course of vocational rehabilitation when it supplements the major part of the course to provide the veteran with theory or technical information directly related to and functional in the practice of the occupation for which he or she is being trained.

(g) *Training in the home.* A full-time course which a veteran pursues in his or her home with an individual instructor or instructors when:

(1) The limitations imposed by his or her disability prevent regular travel to and from a suitable training facility;

* * * * *

(5) There is evidence that upon completion of the training program the veteran will be suitably employable in his or her home or other place with reasonable assurance of continuing employment.

(h) *Independent instructor course.* * * *

(1) An independent instructor course will be prescribed only when the course of vocational rehabilitation is not available through an established school, training on-the-job establishment, or sheltered workshop within a reasonable commuting distance from the veteran's home, and the handicap caused by the veteran's disability precludes requiring his or her going elsewhere for training.

* * * * *

(3) Since the customary channels opening into employment may not be readily available to a veteran pursuing an independent instructor course, arrangements for satisfactory employment upon completion of the training shall be thoroughly considered and found favorable before the veteran is approved for such training. The veteran will be encouraged to develop gradually a market for his or her products and services and to supply that market so that by the completion of the training program he or she will have been trained into employment.

(i) *Farm cooperative course.* A full-time course designed to restore employability by training a veteran to operate a farm over which he or she has control or to manage a farm as the employee of another. Such course shall be carefully planned and developed by the Veterans Administration in collaboration with the instructor to suit the needs of the individual veteran. Full consideration should be given to the size and character of the farm on which the veteran is to receive the farm part of his or her course. The veteran must become proficient in the type of farming for which he or she is training—in planning, producing, marketing, farm mechanics, conservation of farm resources, conservation of food, farm financing, farm management, and the keeping of farm and home accounts. Instruction will satisfy the requirements of paragraph (i) (1) or (2) of this section.

* * * * *

(2) Farm instruction of at least 200 hours per year (not less than 10 hours in any one month and sufficiently more in other months to aggregate the required 200 hours per year) given by a fully qualified individual instructor by contract either with an educational agency or directly with the individual instructor, when:

* * * * *

(ii) Such instruction is limited to situations where the veteran is being trained to operate a farm over which he or she has control.

(3) Where the course is designed to train a veteran to operate a farm under his or her own control the plan for training developed by the Veterans Administration in collaboration with the instructor will satisfy the following requirements:

* * * * *

(iv) A detailed individual training program showing the kind and amount of instruction—classroom and individual, or farm group and individual, or individual.

(v) The operation of the farm shall be under the control of the veteran by ownership, lease, or other written tenure arrangement. Where the tenure arrangement is other than by ownership, the lease or other written agreement shall afford the veteran control of the farm at least until the completion of his or her course. The veteran's control must be such that he or she will be free to carry out the teachings of the training program and to operate a farm according to a farm and home plan developed by the Veterans Administration in collaboration with the instructor, the veteran, and, when appropriate, the landlord. Also, the lease or agreement must provide for capital improvements to be made which are necessary for carrying out the farm and home plan, with the veteran furnishing no greater portion of the costs thereof than the benefits accruing warrant. Furthermore, it must provide for the landlord to share the costs of improved practices put into effect in proportion to the returns he or she will receive from such practices. Ordinarily training will be approved for only one veteran on a single farm. However, where conditions of a particular farm are so highly favorable as to size, character, productivity, and equipment to assure the successful rehabilitation of a veteran in partnership with another person, such veteran may be placed in training with one, but not more than one, other veteran on a single farm, when the other veteran is, or immediately will be, in farm cooperative training or has satisfactorily pursued institutional farm training under laws administered by the Veterans Administration. There must be documentary evidence that the two principals have entered into a bona fide partnership agreement which provides for equal authority between the partners in the management and operation of the farm.

(vi) The farm at the time of induction of the veteran into training and throughout the period of training shall be of such size and character that, together with the instruction part of the course, it will occupy the full time of the veteran, will permit instruction in planning, management, and operation of most of the major farming enterprises in the veteran's farm and home plan and, at least by the end of the necessary minimum period of training, will assure him or her a reasonably satisfactory living under normal economic conditions.

(vii) The farm must have the necessary buildings and equipment to enable the veteran satisfactorily to commence pursuit of the course of farm cooperative training, and there must be present conditions which give reasonable promise that any additional items required for pursuit of the course, including livestock, will be available as they become necessary.

* * * * *

10. In § 21.202, paragraph (a)(3) is revised to read as follows:

§ 21.202 Full-time vocational rehabilitation training.

(a) Full-time vocational rehabilitation training for disabled veterans having normal work tolerance will be:

* * * * *

(3) Farm cooperative training assessed in accordance with § 21.201(i).

* * * * *

11. In § 21.204, paragraphs (b) (1), (2) and (3) is revised to read as follows:

§ 21.204 Duration of the course.

* * * * *

(b) *Providing vocational rehabilitation training when the program cannot be completed by the Veterans Administration.* * * *

(1) There is a written agreement among the veteran, the Veterans Administration, and some other responsible agency or individual that, upon expiration of the veteran's entitlement under chapter 31, the responsible agency or person will provide the remaining amount of training necessary to restore the veteran to employability so long as his or her conduct and progress remain satisfactory. Such responsible agency or person may be the State rehabilitation agency or it may be the responsible official of a grant-in-aid fund which provides an amount that gives support to living expenses and for school training, tuition costs if any. The essential requirement is that support of a veteran's program will be reasonably assured and he or she agrees that it is sufficient to enable him or her to remain in the course to its completion. A veteran may enter training or reenter for a new objective only if there remains at least 3 months between the date of entrance or reentrance and the veteran's termination date.

(2) It is determined that the veteran who has entered into training properly planned for completion by his or her termination date will not reach employability by that date for reasons beyond his or her control and it is not possible to arrange for completion of training by some other agency or individual. In such case the veteran will be allowed to continue the course for his or her selected objective to his or her termination date, at which time all obligation of the Veterans Administration will cease.

(3) The prescribed course of vocational rehabilitation leads to an objective the practice of which requires passing of an examination for license and the veteran is able to complete all of the course by his or her termination date but is unable to take the licensing examination by that date. The veteran will be notified that obtaining a license will not be the responsibility of the Veterans Administration.

12. Section 21.205 is revised to read as follows:

§ 21.205 Adjusting the duration of the course.

A course of training will be prescribed and arranged for which is necessary to restore employability in the occupation which has been selected. Although certificate B gives an estimated length of the course, the duration will be that period of training which is necessary to qualify for employment taking into account any applicable previous training or experience in the individual veteran's case. As the veteran proceeds with the course there will be a continuing appraisal of his or her progress toward satisfactory completion of training. Based on this appraisal, any necessary adjustments to lengthen or shorten the previously planned period of training will be made to assure that:

(a) The veteran upon completion of such training will be employable as a trained worker in the selected occupation; and

(b) The duration of the veteran's course will not exceed the period necessary to make him or her employable in his or her objective.

13. In § 21.206, the introductory portion of paragraph (a) preceding subparagraph (1) and paragraph (a)(3) are revised to read as follows:

§ 21.206 Approval of training in excess of 4 years.

* * * * *

(a) The veteran cannot be trained to employability in an occupation consistent with the vocational handicap resulting from his or her disability and suitable in terms of his or her aptitudes, abilities, and interests, without exceeding 4 years of training time, subject to the following:

* * * * *

(3) Where the veteran's selected objective is reasonable in terms of his or her educational background and demonstrated abilities and he or she lacks the general education necessary for entrance into or satisfactory pursuit of his or her vocational course, general education on the elementary or secondary level may be provided if the general educational level to be attained can be reached in not to exceed 2 full school years—approximately 18 months—and the vocational course can be completed in not to exceed an additional 48 months.

* * * * *

14. Section 21.207 is revised to read as follows:

§ 21.207 Repetition of a course.

(a) A veteran having completed a course under chapter 31 according to the standards and practices of the institution ordinarily will not be authorized to pursue it again at the expense of the Government. However, repetition of the course or a particular part or parts of it may be approved when it is determined to be necessary to accomplish the veteran's vocational rehabilitation. A veteran repeating a course under chapter 31 is subject to the same requirements for satisfactory pursuit and completion of the course as are other students taking the course. (38 U.S.C. 1780(a) Pub. L. 94-502, 90 Stat. 2383)

(b) An eligible veteran who has completed a course of training under chapter 31 may pursue a review course if it is specifically organized and conducted as a review course. The number of repetitions of a review course which may be approved for a particular veteran will be determined on the basis of his or her need and a reasonable assurance that further repetition will restore employability.

(c) Audited courses, as defined in § 21.4200(i), may not be authorized as a part of a program of training under chapter 31. If an individual repeats a course, pursuant to paragraph (a) of this section, however, payment of benefits may be made, since the course is being pursued in the same manner as a credit course, whether or not credit is given, i.e., the individual is not merely a listener and must meet the same requirements as other students. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

15. Section 21.209 is revised to read as follows:

§ 21.209 Status "training declined."

(a) A veteran in status "induction pending" who has never been in vocational rehabilitation training will be changed to "training declined" when, after being properly notified that suitable training is available for him or her and instructed as to the next step he or she should take:

(1) Fails to respond; or

(2) Declines or refuses induction; or

(3) Defers induction for a period exceeding 30 days beyond the scheduled date of induction, except where such deferment is due to illness or other sufficient reason; or

(4) Has been given notice to report at a designated place and time to commence training, and he or she fails to report and fails to furnish satisfactory reasons for not reporting; or

(5) Commences or continues to pursue education or training under chapter 34 or 35.

(b) A veteran who is changed from status "induction pending" to status "training declined" will be informed that if his or her disability rating is reduced to less than compensable degree he or she will lose entitlement for vocational rehabilitation. The veteran will also be informed that if he or she requests training after 60 days from the time he or she is placed in "training declined" status the entire question of need for vocational rehabilitation will have to be reconsidered.

(c) Where the veteran requests induction into training within 60 days of the date he or she is placed in "training declined" status he or she may be entered into training without further counseling when:

(1) His or her disability has not been reduced to less than compensable degree, and

(2) There is no known reason why further counseling is needed.

16. In § 21.222, paragraph (f) is added to read as follows:

§ 21.222 Additional conditions for induction into training on the job.

* * * * *

(f) Training in an agency of the Federal Government, as permitted by § 21.223(c), will be in accord with the conditions and requirements of training on-the-job except that, when it is determined to be necessary to accomplish vocational rehabilitation, a veteran may be entered into training without compensation by the training establishment. The conditions applicable to such unpaid training are as follows:

(1) The determination as to the need for such training, as all or part of a veteran's program of vocational rehabilitation, will be made collaboratively by the Counseling Psychologist and Vocational Rehabilitation Specialist, based on an analysis of the veteran's needs, as indicated by his or her disability, education and work experience, employment goal, and other pertinent factors, in relation to available training resources and the requirements for restoration of employability.

(2) Unpaid training in a Federal agency may be used to prepare the veteran for employment in that agency, or, as appropriate, may be used as preparation for other public employment or employment in the private sector.

(3) Unpaid training may be used to provide training in the areas of knowledge and the skills and competencies required for a specific occupation and/or to provide work experience when such work experience is needed for the purposes of adjustment or transition to render the veteran employable. (38 U.S.C. 1511; Pub. L. 94-502, 90 Stat. 2383.)

17. In § 21.223, the headnote is changed, paragraph (a) is revised and paragraph (c) is added so that the revised and added material reads as follows:

§ 21.223 Induction into training on the job at subminimum wage rates or training at Federal facilities without pay.

(a) The Fair Labor Standards Act of 1938, as amended, requires a minimum wage with provision for an overtime rate, for most persons who are engaged in interstate commerce or in the production of goods for interstate commerce. The Administrator of the Wage and Hour Division, United States Department of Labor, may approve a subminimum hourly wage rate for handicapped workers where necessary in order to prevent curtailment of opportunities for employment. Similarly, the Walsh-Healey Public Contracts Act (Pub. L. 846, 74th Cong.) requires that all persons employed by a contractor on work subject thereto be paid not less than the applicable minimum wages as determined by the Secretary of Labor. When the hours of employment-training exceed 40 in any one work week or 8 in any one day, employees not exempt must be paid not less than time and one-half. Questions of coverage in all doubtful cases will be cleared with the Wage and

Hour Division's Regional Director before induction into training.

* * * * *

(c) Notwithstanding any other provision of law, the facilities of any agency of the United States may be used to provide unpaid training or work experience as part or all of a veteran's program of vocational rehabilitation when the Counseling Psychologist and Vocational Rehabilitation Specialist determine such training or work experience to be necessary to accomplish vocational rehabilitation in accordance with § 21.222(f)(1). While pursuing such training or work experience, an uncompensated veteran shall be deemed to be an employee of the United States for the purposes of benefits under chapter 81, title 5, United States Code, but not for the purposes of laws administered by the Civil Service Commission. (38 U.S.C. 1511; Pub. L. 94-502, 90 Stat. 2383)

18. Sections 21.260 and 21.261 are revised to read as follows:

§ 21.260 Introduction.

A veteran in a course of vocational rehabilitation may be granted leave of absence where such leave will not materially interfere with the pursuit of his or her course.

§ 21.261 Ordinary leave.

Ordinary leave will accrue at the rate of 2½ days per month during the entire time the veteran is in training status, including that time during which he or she is on approved leave of absence. Leave will not be accumulated to an amount in excess of 30 days. Accumulated leave will not be forfeited through interruption of training and may be carried over from one period of training to another and from one 12 successive months period of training to another. Similarly, where reentrance into training after rehabilitation or discontinuance is authorized, unused accumulated ordinary leave may be recredited to the veteran's account upon reentrance into training.

(a) *Granting of ordinary leave.* Ordinary leave of absence may be approved, as needed, in excess of amount of leave accrued to the credit of the veteran, but in no case may ordinary leave in excess of an aggregate of 30 days be authorized in any 12 months of training, beginning with the date of the veteran's entrance into training.

(1) The granting of such leave will not materially interfere with the pursuit of the prescribed course; and

(2) Except where the training establishment is not operating full time no ordinary leave will be granted which will require extending the veteran's training beyond 48 months, or further extending the training where in excess of 48 months already has been authorized.

(b) *Charging of ordinary leave.* Approved absences covering a period less than the standard school or work week of the training institution or establishment will be charged at the rate of 1 day for each school or working day of absence from the institution. Approved absences covering a period of 1 calendar week or more will be charged at the rate of 5 days for each 7 consecutive days of absence.

(1) For veterans enrolled in educational institutions, leave may not be authorized nor subsistence allowance paid for any period of more than 1 full calendar month between terms or other periods of instruction within a period of enrollment. When such interim period is 1 full calendar month or less subsistence allowance may be paid and leave will be charged for veterans enrolled in courses not leading to a standard college degree; there will be no charge against leave for veterans enrolled in courses leading to a standard college degree.

(2) If the veteran transfers, with vocational rehabilitation specialist approval, from one approved educational institution to another for the purpose of enrolling in and pursuing a similar course at the second institution during the next consecutive term, and the period between such consecutive terms does not exceed 30 days, such period will not be charged against leave for veterans pursuing a standard college degree program but will be charged against leave for veterans in courses not leading to a standard college degree. Leave may not be authorized, nor subsistence allowance paid, if the interval exceeds 30 days.

(3) If the educational institution certifies the enrollment of the veteran on an individual semester, term or quarter basis and the interval between such periods does not exceed 1 full calendar month, such period will not be charged against leave for veterans pursuing a standard college degree, but will be charged against leave for veterans in courses which do not lead to a standard college degree. Leave may not be authorized, nor subsistence allowance paid, if the interval exceeds 1 full calendar month.

(4) Leave will not be charged for periods where the school is temporarily closed under an established policy based upon an Executive order of the President or due to an emergency situation. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(5) For veterans pursuing on-the-job training, no charge will be made for holidays established by Federal or State law but a charge will be made for periods during which vacations are granted to all employees at the same time; or periods during which the plant is shut down to undergo repairs or because of such things as fuel shortages, strikes, inclement weather, etc.

(6) For veterans pursuing institutional-on-farm training, leave will not be charged for routine absences from the farm required in the ordinary day-to-day conduct of the farm business or for absences from that part of an institutional on-farm course which is given at the educational institution. However, absences which materially interfere with the pursuit of the course or prevent the veteran from receiving the required amount of instruction will be cause for interruption or discontinuance of training.

(7) For veterans in programs of independent study which are not on a semester or quarter basis, leave between designated periods of study may be authorized and will be charged on same basis as leave between terms.

19. In § 21.262, the introductory portion preceding paragraph (a) and paragraph (b)(1) are revised to read as follows:

§ 21.262 Additional leave under exceptional circumstances.

Leave of absence in addition to ordinary leave may be approved under the following conditions, provided it is reasonably certain that the veteran will return to the pursuit of his or her course not later than the close of the period for which leave is approvable.

* * * * *

(b) *Personal hardship.* (1) After all accrued ordinary leave has been exhausted, additional leave, not to exceed 30 days in each 12 months of training status beginning with the date of the veteran's entrance into training, may be granted for reasons other than personal illness, when failure to do so would cause personal hardship to the veteran. Satisfactory reasons under this category might include illness or death in the veteran's immediate family or other compelling conditions beyond the veteran's control which, in the opinion of the Veterans Administration, make it necessary that the veteran be permitted to absent himself or herself from training. Personal hardship leave will not be granted to cover periods between ordinary school years.

* * * * *

20. Section 21.701 is revised to read as follows:

§ 21.701 Need for vocational rehabilitation.

(a) A veteran having basic eligibility for whom training to employability is found medically and otherwise feasible may be afforded training if he or she

is found in need of vocational rehabilitation because of the handicap of his or her service-connected disability.

(b) A veteran who has a service-connected disability of compensable degree which resulted from service in the Armed Forces on or after September 16, 1940, will be presumed to be in need of vocational rehabilitation. However, a veteran will be held not in need of training, if it is determined through counseling that the veteran's service-connected disability causes no limitations on potential employability or, if such limitations exist that he or she is employed or fully qualified for employment in a suitable occupation. An occupation in which a disabled veteran is employed or in which he or she could obtain and hold employment will be considered suitable when the following criteria are met;

(1) The occupation is one which is pursued by workers in the locality where the veteran resides; and

(2) The veteran can meet the requirements of the occupation with no great likelihood of aggravating the disability; and

(3) The occupation is one in which a trained worker normally pursues employment and earns a livelihood; and

(4) Job requirements are such that a period of training (over and beyond vestibule training) is required to secure and hold employment in it; and

(5) The occupation is consistent with the veteran's aptitudes, abilities, interests, and capacities.

(c) The determination as to whether a disabled veteran is in need of vocational rehabilitation will be made by counseling psychologists in Veterans Services Divisions in field stations.

21. In § 21.1020, paragraph (b) is revised to read as follows:

§ 21.1020 Educational assistance.

* * * * *

(b) *45 Months limitation.* Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, except as specified in § 21.1041.

* * * * *

§ 21.1021 [Amended]

22. Immediately following § 21.1021, the cross reference is changed to read "Measurement of courses. See § 21.4270 (c) or (d)".

23. In § 21.1040, the introductory portion preceding paragraph (a) and paragraph (a) are revised to read as follows:

§ 21.1040 Basic eligibility.

Basic eligibility for educational assistance for persons training under chapter 34, title 38, United States Code, including chapter 36 to the extent applicable, is subject to the following requirements:

(a) *Service.* An eligible veteran is a person with active duty service, including travel time which meets the requirements of § 3.6(b)(6) of this chapter, who has either:

(1) Served on active duty for a continuous period of 181 days or more, any part of which occurred on or after February 1, 1955, and before January 1, 1977,

(2) Served on active duty for a continuous period of 181 days or more, as a result of a contract with the Armed Forces in a program such as the DEP (Delayed Enlistment Program), or an ROTC (Reserve Officer's Training Corps) program for which a person enlisted in, or was assigned to, a reserve component prior to January 1, 1977, any part of which period of active duty commenced within 12 months after January 1, 1977, or

(3) Served on active duty for a period of less than 181 days any part of which period was performed, either after January 31, 1955 and before January 1, 1977 or if pursuant to a contract as provided in paragraph (a)(2) of this section, after January 1, 1977 and was discharged or released because of a service-connected disability. (38 U.S.C. 1652; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

24. In § 21.1041, paragraphs (a) and (d) are revised to read as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* (1) A veteran with less than 18 months active duty service or a person on active duty who meets the requirements of § 21.1040 will be entitled to full-time educational assistance for a period not in excess of 45 months computed on the basis of 1½ months (or the equivalent in part-time educational assistance) for each month or fraction of a month of service on active duty on or after February 1, 1955 up to and including the date of the veteran's first discharge or release after December 31, 1976, if he or she was in the active military service on December 31, 1976, or has eligibility as provided in § 21.1040(a)(2). First discharge or release means the first such discharge or release wherein the person is eligible for complete separation from active duty. There will be excluded from the period of entitlement the periods specified in § 21.1040 (b) and (c).

(2) A veteran who has served a continuous period of not less than 18 months of active duty on or after February 1, 1955, and who has been released from such service under conditions that satisfied his or her active duty obligation, will be entitled to full-time educational assistance for a period of 45 months (or the equivalent in part-time educational assistance). Service on or after January 1, 1977 may be included up to and including the date of the veteran's first discharge or release after December 31, 1976 if he or she was in the active military service on December 31, 1976 or has eligibility based upon section 1652(a)(1)(B), title 38, United States Code (§ 21.1040(a)(2)). The periods specified in § 21.1040(b) will be excluded in computing the 18 months period.

(3) The veteran may use his or her entitlement at any time during the 10-year period determined under § 21.1042, but in no event shall education or training be afforded a veteran under chapter 34 or 36 after December 31, 1989. It is not required that the entitlement time be used in consecutive months.

(4) The 45 months limitation may be exceeded where an extension is authorized under paragraph (d) of this section, or where no charge against entitlement is made based on a course or courses pursued at a secondary school level, as provided in § 21.1045(a), pursued by a veteran under the Program of Special Assistance for the Educationally Disadvantaged or by a serviceman or servicewoman under the Predischarge Education Program, or pursued by a spouse, or surviving spouse under the Special Assistance for the Educationally Disadvantaged program. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

(d) *Extension.* The period of entitlement, including the 45 months period, may be extended, but not beyond the 10-year delimiting date specified in § 21.1042:

(1) To the end of a term, quarter or semester in a school regularly operated on a term, quarter or semester system, when the period of entitlement ends during the term, quarter or semester.

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that $756 will provide for flight and $817 will provide for correspondence whichever is less. (38 U.S.C. 1661; Pub. L. 94-502, 90 Stat. 2383.)

(3) No extension of the period of entitlement will be made where training is pursued in a training establishment as defined in § 21.4200(c).

25. Section 21.1042 is revised to read as follows:

§ 21.1042 Ending dates of eligibility.

The ending date of eligibility will be the latest of the following dates:

(a) *General.* No educational assistance will be afforded a veteran later than 10 years after his or her last discharge or release from active duty after January 31, 1955 or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383.)

(b) *Correction of military records.* If the veteran became eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552 or a change, correction, or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, educational assistance will not be afforded later than 10 years after the date his or her discharge or dismissal was changed, corrected or modified or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383.)

(c) *Initial eligibility*—(1) *Discharge or release before June 1, 1966.* Where eligibility is based on a discharge or release from active duty before June 1, 1966, educational assistance will not be afforded later than May 31, 1976.

(2) *Discharge or release before August 31, 1967.* Where eligibility is based on a discharge or release from active duty before August 31, 1967, educational or training assistance based on a course of apprentice or other on-the-job training, flight training, or farm cooperative training approved under the provisions of § 21.4261, 21.4262, 21.4263 or 21.4264 will not be afforded later than August 30, 1977. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383.)

(d) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the day preceding the end of the 10-year period or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383.)

(e) *Periods excluded.* There shall be excluded in computing the 10-year period of eligibility for educational assistance under this section, any period during which the eligible veteran subsequent to his or her last discharge or release from active duty was captured and held as a prisoner of war by a foreign government or power plus any period immediately following the veteran's release from detention during which he or she was hospitalized at a military, civilian, or Veterans Administration medical facility, provided:

(1) The veteran served on or after February 1, 1955, and

(2) The veteran was eligible for educational assistance under the provisions of chapter 34 or chapter 36 of title 38, United States Code. (38 U.S.C. 1662.)

(3) In no event shall educational assistance be afforded to any eligible veteran under chapters 34 or 36 after December 31, 1989. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383.)

26. In § 21.1045, paragraphs (a)(2) and (5), (b) and (d) are revised to read as follows:

§ 21.1045 Entitlement charges.

(a) *Residence courses.* * * *

(2) *Flight training courses; Chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each $270 which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½ or ¼ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b); Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

(5) *Secondary school training; Chapter 35 Spouse or Surviving Spouse.* No charge will be made against the entitlement of a spouse or surviving spouse based on a course pursued under the circumstances outlined in § 21.4237, Special Assistance for the Educationally Disadvantaged. (38 U.S.C. 1733.)

* * * * *

(b) *Correspondence courses*—(1) *High school courses.* The provisions of paragraph (a)(1) of this section, except to servicemen or servicewomen on active duty, and paragraph (a)(5) of this section are applicable to correspondence courses at a secondary school level.

(2) *Other courses.* Except as provided in paragraph (b)(1) of this section, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $175 paid to the veteran as an educational assistance allowance for such course, for contracts entered into before January 1, 1973. For agreements entered into after December 31, 1972, the period of entitlement of any eligible veteran, spouse or surviving spouse who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $220 paid before September 1, 1974 to the veteran, spouse or surviving spouse as an educational assistance allowance for such course. For payments made on or after September 1, 1974, the charge will be 1 month for each $260 paid and for payments made on or after January 1, 1975, the charge will be 1 month for each $270 paid. For payments made on or after October 1, 1976, the charge will be 1 month for each $292 paid. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½ or ¼ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1786(a)(2); Pub. L. 94-502, 90 Stat. 2383)

* * * * *

(d) *Active duty.* A charge against the period of entitlement for a program of education pursued by a veteran, serviceman or servicewoman on active duty will be made on the basis of the credit hours for which enrolled or clock hours of attendance, except that no charge against entitlement will be made where the courses are pursued under the program of Special Assistance for the Educationally Disadvantaged or the Predischarge Education program. See § 21.4270.

* * * * *

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

27. The title of Subpart C is changed to read "Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35."

28. In § 21.3020, the introductory portion preceding paragraph (a) and paragraph (b) are revised to read as follows:

§ 21.3020 Educational assistance.

The program of educational assistance under 38 U.S.C. ch. 35 captioned Survivors' and Dependents' Educational Assistance, may be referred to as Dependents' Educational Assistance. (Sec. 309, Pub. L. 94-502, 90 Stat. 2383)

* * * * *

(b) *45 months limitation.* Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, unless it is determined that a longer period is required for special restorative training under the circumstances outlined in § 21.3300(c) or except as specified in § 21.3044(c). (38 U.S.C. 1711(a), 1733, 1741(b); Pub. L. 94-502, 90 Stat. 2383)

* * * * *

29. In § 21.3021, paragraphs (a)(1)(iii), (2) introductory portion preceding subdivision (i), (3) introduction and subdivision (i), (c) and (d) are revised to read as follows:

§ 21.3021 Definitions.

(a) "Eligible person" means:
(1) A child of a

* * * * *

(iii) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

* * * * *

(2) The surviving spouse of a:

* * * * *

(3) The spouse of a:
(i) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

* * * * *

(c) "Wife" and "widow", "spouse" and "surviving spouse." The terms "wife" and "widow" mean an individual as defined in § 3.807(d) of this chapter and the terms "spouse" and "surviving spouse" shall have the same respective meaning when used in the regulations in Part 21, Title 38, Code of Federal Regulations. Educational assistance allowance may not be authorized for any such individuals for any period before December 1, 1968. (38 U.S.C. 1700, 1701, and 1711; Pub. L. 94-502, 90 Stat. 2383)

(d) *"Parent or guardian"* means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 1701(a)(4)) or it may be the eligible person if he or she has attained majority under laws applicable in his or her State of residence as shown on the application and is under no known legal disability. (38 U.S.C. 1701(b)). The eligible person may be designated as the person by whom required actions may be taken even though he or she has not attained majority, or having attained majority, is under a legal disability, when it is determined that to do otherwise would not be in his or her best interest, would result in undue delay or would not be administratively feasible. Where necessary to protect his or her interest and there is reason why the eligible person should not act for himself or herself, some other individual may be designated as the person by whom required actions should be taken. (38 U.S.C. 1701(c))

* * * * *

30. Section 21.3030 is revised to read as follows:

§ 21.3030 Claims.

A specific claim in the form prescribed by the Administrator must be filed by the spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person in order for educational assistance allowance or special restorative training allowance to be paid. (38 U.S.C. 1713; Pub. L. 94-502, 90 Stat. 2383)

31. In § 21.3031, paragraph (a) is revised to read as follows:

§ 21.3031 Informal claims.

(a) Any communication from a spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person, an authorized representative or a Member of Congress indicating an intent to apply for educational assistance for an eligible person may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person for execution. If received within 1 year after the date it was sent to the spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person, it will be considered filed as of the date of receipt of the informal claim. (38 U.S.C. 1713; Pub. L. 94-502, 90 Stat. 2383)

* * * * *

32. In § 21.3040, paragraph (d) is revised to read as follows:

§ 21.3040 Eligibility; child.

* * * * *

(d) *Termination of eligibility.* No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under § 21.3041(e)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See § 21.3300.

33. In § 21.3041, the introductory portion of paragraph (d) preceding subparagraph (1) and paragraph (e) are revised to read as follows:

§ 21.3041 Periods of eligibility; child.

* * * * *

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraph (d)(1) to (7) of this section and 10 years in paragraph (d)(8), whichever is later. Where the ending date is subject to modification under more than one of paragraph (d)(3), (4), (5), (6) or (7) of this section the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.

* * * * *

(e) *Extensions to ending dates.* (1) Suspension of program due to conditions determined by the Veterans Administration to have been beyond the person's control (see § 21.3043): extended for length of period of suspension, but not beyond age 31. See § 21.3040(d).

(2) Period of eligibility as specified in paragraph (c) or (d) of this section ends while enrolled in an educational institution regularly operated on the quarter or semester system and such period ends during a quarter or semester, such period shall be extended to the end of the quarter or semester, or for courses at educational institutions operated on other than a quarter or semester system, if the period ends after a major portion of the course is completed, such period shall be extended to the end of the course, or until 12 weeks have expired, whichever first occurs. Extension may be authorized beyond age 31, but may not exceed maximum entitlement. See § 21.3044(a). No extension of the period of eligibility will be made where training is pursued in a training establishment as defined in § 21.4200(c). (38 U.S.C. 1712(a)(5); Pub. L. 94-502, 90 Stat. 2383)

(3) Child is enrolled and eligibility ceases because veteran is no longer rated permanently and totally disabled: extended to date specified in paragraph (e)(2) of this section without regard to whether the midpoint of the quarter, semester or term has been reached. See § 21.4135(o).

(4) Child is enrolled and eligibility ceases because the member of the Armed Forces upon whose service eligibility is based is no longer listed by the Secretary concerned in any of the categories specified in § 21.3021(a)(1)(iv): extended to date specified in paragraph (e)(2) of this section without regard to whether the midpoint of the quarter, semester or term has been reached. See § 21.4135(o).

34. Section 21.3044 is revised to read as follows:

§ 21.3044 Entitlement.

(a) Each eligible person is entitled to educational assistance for a period not in excess of 45 months, or the equivalent thereof in part-time training. No extension of entitlement will be authorized except as provided in paragraph (c) of this section. The period of

entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which subsistence allowance was paid after determination of employability following vocational rehabilitation. Where the period of entitlement is subject to reduction by reason of prior training the period of prior training will be converted to months and quarter fractions of a month before subtracting this period from the period of entitlement. In the conversion process a period of prior training less than a full month will be converted by using the table in § 21.1041(c).

(b) The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program in the period of 45 consecutive months.

(c) The 45 months limitation may be exceeded only in the following cases:

(1) Where no charge against entitlement is made based on a course or courses pursued by a spouse or surviving spouse under the Special Assistance for the Educationally Disadvantaged program. (See § 21.4237); or

(2) Where special restorative training authorized under § 21.3300 exceeds 45 months.

35. Section 21.3046 is revised to read as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraph (c) of this section. If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-the-job training, or correspondence approved under the provisions of §§ 21.4256, 21.4261 and 21.4262 will not be afforded later than October 23, 1982. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section, however, will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(a) *Spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) If the permanent total rating is effective on or after December 1, 1968, or the notification to the veteran of such rating was on or after that date, the beginning date of the 10-year period of eligibility is the effective date of the rating or the date of notification, whichever is more advantageous to the spouse.

(3) If eligibility arises under § 21.3021(a)(3)(ii) the beginning date of the 10-year period is December 24, 1970, or the date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(b) *Surviving spouses.* (1) If the veteran's death occurred before December 1, 1968, the beginning date of the 10-year period is December 1, 1968.

(2) If the veteran's death occurred on or after December 1, 1968, the beginning date of the 10-year period is the date of death.

(c) *Extension to ending date.* Spouse is enrolled and eligibility ceases for a reason specified in paragraph (c)(1), (2) or (3) of this section: extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 12 weeks, whichever is earlier. In a course pursued exclusively by correspondence, the period of eligibility will be extended to the end of the course or for the total additional amount of instruction that $817 will provide, whichever is less. No extension may exceed maximum entitlement or extend beyond the 10-year delimiting date specified in paragraph (a) of this section. Extension is authorized without regard to whether the midpoint of the quarter, semester or term has been reached. No extension of the period of eligibility will be made where training is pursued in a training establishment as defined in § 21.4200(c).

(1) Veteran is no longer rated permanently and totally disabled.

(2) Spouse is divorced from veteran without fault on her or his part.

(3) Spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii). (38 U.S.C. 1711(b), 1712(b), 1732, 1786; Pub. L. 94-502, 90 Stat. 2383)

36. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) Special restorative training may be provided in excess of 45 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment in excess of $92 per calendar month. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b), 1742; Pub. L. 94-502, 90 Stat. 2383)

* * * * *

37. In § 21.3303, the introductory portion preceding paragraph (a) and paragraphs (a) and (b) are revised to read as follows:

§ 21.3303 Extent of training.

Ordinarily special restorative training may not exceed 9 months. However, where it is determined that more than 9 months is necessary the program will be referred to Central Office for prior approval. Where the plan for a program of special restorative training of itself (not in combination with the program of education) will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to Central Office for approval. The limitation at age 31 may not be exceeded. A course of special restorative training will be prescribed on a full-time basis as determined in each individual case in accordance with one of the following requirements:

(a) The course will require devotion of that amount of time per week which is commonly devoted to a full-time course at an educational institution in each ease where, based on medical findings, it is determined that the physical or mental condition of the eligible person will permit the devotion of that amount of time to his or her training.

(b) The course will require devotion of the maximum amount of time per week which is determined by medical findings to be commensurate with the limitations imposed by the eligible person's disability in each case where medical authority determined that, due to such limitations, the time he or she should devote to his or her course is less than the amount of time indicated in paragraph (a) of this section.

* * * * *

38. In § 21.3304, paragraphs (b)(2), (c)(1) and (3) and (d) are revised to read as follows:

§ 21.3304 Assistance during training.

* * * * *

(b) Supervision will as a minimum consist of the following:

* * * * *

(2) The assisting of the eligible person and his or her instructor in all matters affecting training.

* * * * *

(c) When in the process of supervision it is determined that adjustments are needed in the course or in the training situation immediate action will be taken to bring about such adjustments in accordance with the following:

(1) When the eligible person or his or her instructor indicates dissatisfac-

tion with elements of the program through personal discussion with the eligible person and/or his or her instructor, there will be effected if possible a correction of the difficulty through such means as making minor adjustments in the course or by persuading the eligible person to give more attention to performance.

* * * * *

(3) When in process of supervision it is determined that the eligible person is making progress much faster than was anticipated and it is clear that his or her course may be terminated with satisfactory results short of the time originally planned, action will be taken to terminate the course at the proper time so that the eligible person's entitlement to an educational program may be conserved.

(d) As long as the eligible person is making satisfactory progress toward the established objective of overcoming the effect of his or her handicap, the eligible person will be continued in his or her course of training without accounting for days of nonattendance within his or her authorized enrollment. However, in any instance where the eligible person's progress toward his or her objective is unsatisfactory or because of his or her negligence, lack of application or misconduct, his or her progress is being materially retarded his or her course of instruction will be interrupted.

39. In § 21.3305, paragraph (a) is revised to read as follows:

§ 21.3305 Status "interrupted."

(a) An eligible person once entered into special restorative training should pursue his or her course to completion without interruption. Wherever possible, continuous training shall be provided for each such eligible person, including training during the summer, except where, because of his or her physical condition or other good reason, it would not be to his or her best interest to pursue training during the summer.

* * * * *

40. In § 21.3333, paragraphs (a) and (b) are revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training.	$292	If costs for tuition and fees average in excess of $92 per month, rate may be increased by such amount in excess of $92.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each $9.76 that the special training allowance exceeds the basic monthly rate of $292. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

41. In § 21.4130, the introductory portion preceding paragraph (a) is revised to read as follows:

§ 21.4130 Educational assistance allowance.

Educational assistance allowance will be paid at the rate specified in § 21.4136 or 21.4137 while the veteran or eligible person is pursuing a course of education. Except for apprenticeship and on-the-job training programs, no payment will be made based on a course not leading to a standard college degree for excessive absences as determined under § 21.4205(b). (See §§ 21.4136(i) and 21.4137(f) for proportionate reduction where less than 120 hours are completed during month in apprenticeship and on-job training programs.) Final payment may be withheld until proof of continued enrollment is received and the account adjusted.

* * * * *

42. In § 2.4135, paragraphs (e), (g), (s), and (v) are revised, paragraph (m) is revokd and paragraph (w) is added so that the revised and added material reads as follows:

§ 21.4135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance allowance will be specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

* * * * *

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from (§§ 21.4136 and 21.4137).* (1) If the individual withdraws from all courses or receives all nonpunitive grades and in either case there are no mitigating circumstances as provided in § 21.4136(k) or 21.4137(h), benefits will be terminated or reduced effective first date of the term in which the withdrawal occurs or the term for which the grades are assigned or December 1, 1976, whichever is the later.

(2) If the individual withdraws from all other courses other than courses in paragraph (e)(3) of this section and with mitigating circumstances, as provided in § 21.4136(k) or 21.4137(h), or withdraws from all courses such that a punitive grade is or will be assigned for those courses:

(i) Residence training: Last date of attendance.

(ii) Independent study: Official date of change in status under the practices of the institution.

(3) If the individual withdraws from correspondence, flight, farm cooperative, cooperative or job training, benefits will be terminated effective:

(i) Correspondence training: Date last lesson is serviced.

(ii) Flight training: Date of last instruction.

(iii) Job training: Date of last training.

(iv) Farm cooperative training: Date of last class attendance.

(v) Cooperative training: Date of last training. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

(g) *Unsatisfactory progress (§ 21.4277).* The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under § 21.4277, whichever is earlier.

* * * * *

(m) [Revoked.]

* * * * *

(s) *Reduction in rate of pursuit of course (§ 21.4270).* (1) If the individual reduces training by withdrawing from part of a course because of mitigating circumstances, but continues training in part of the course, benefits will be reduced effective at the end of the month or the end of the term in which withdrawal occurs, whichever is earlier, except first date of the term in which reduction occurs, if the reduction occurs at the beginning of the term.

(2) If the individual reduces training by withdrawing from a part of a course, without mitigating circumstances, the reduction is effective first date of enrollment of the term in which the reduction occurs or December 1, 1976, whichever is the later. See

paragraphs (e) and (w) of this section also.

* * * * *

(v) *Remarriage of spouse or surviving spouse.* (1) Remarriage: Last date of attendance before remarriage.

(2) Conduct of spouse or surviving spouse: Last day of month before inception of relationship.

(w) *Nonpunitive grade.* (1) If the individual receives a nonpunitive grade in a particular course, reduction will be effective last date of attendance, when mitigating circumstances are found.

(2) If the individual receives a nonpunitive grade in a particular course, reduction will be effective the first date enrollment for the term in which the grade applies, or December 1, 1976, whichever is later, when no mitigating circumstances are found. See paragraphs (e) and (s) of this section.

43. In § 21.4136, paragraphs (a), (c), (d), (f), (h), and (j)(2) are revised and paragraph (k) is added so that the revised and added material reads as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1976:

Type of courses	Monthly rate			
	No dependent	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	$292	$347	$396	$24
¾ time	219	260	297	18
½ time	146	174	198	12
Less than ½ but more than ¼ time [1]	[2]146			
¼ time or less	[2]73			
Cooperative, other than farm cooperative (full time only)	235	276	313	18
Apprentice or on-job (full time only but see footnote [3] below.)				
Payment designated training assistance allowance:				
1st 6 mo	212	238	260	11
2d 6 mo	159	185	207	11
3d 6 mo	106	132	154	11
4th 6 mo and succeeding periods	53	79	101	11
Correspondence	90 per centum of the established charge for number of lessons completed by veteran and serviced by school [4]—allowance paid quarterly.			
Flight training	90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—allowance paid monthly based on actual flight training received. See § 21.1045(a)(2).			
Farm cooperative:				
Full time	$235	$276	$313	$18
¾ time	176	207	235	14
½ time	118	138	157	9

[1] If a veteran under chapter 34 or an eligible person under chapter 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $146 or $73 as appropriate per month if the maximum allowance was not initially authorized.

[2] See paragraph (b) of this section.

[3] See footnote 3 of § 21.4270(e) for measurement of full time and paragraph (l) of this section for proportionate reduction in award for completion of less than 120 hr per month.

[4] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before Jan. 1, 1973, will receive 100 pct of the established charges.

(38 U.S.C. 1677, 1682, 1786, 1787; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a)(1) "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar course to have. Where there is no same program, the cost of the course will be established by the Veterans Administration based on a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. Subject to these limitations, the rate will be:

Measurement	Rates
Full time	$292
¾ time	219
½ time	146
Less than ½, but more than ¼ time	146
¼ time or less	73

(38 U.S.C. 1682; Pub. L. 94-502, 90 Stat. 2383.)

(d) *June 1966.* A veteran who commenced a course prior to June 1, 1966, will not be paid for any part of the month of June 1966, unless his or her course continues through June 30, 1966. (Sec. 12(a), Pub. L. 89-358, 80 Stat. 28.)

* * * * *

(f) *Dependents.* The term "dependent" means a spouse, child or dependent parent who meets the definitions of relationship specified in §§ 3.50, 3.51, 3.57 and 3.59 of this chapter. A child adopted outside the veteran's family is included only if the veteran is contributing to the child's support.

* * * * *

(h) *Payment.* Educational assistance allowance at the rates specified in paragraphs (b) and (c) of this section for servicemen or servicewomen on active duty, other than those training under the Predischarge Education Program who qualify for an advance payment under paragraph (j) of this section and who are training on a less than half-time basis, will be paid to or on behalf of the trainee enrolled in an institution operating on a term, quarter or semester basis in a lump sum for the entire quarter, semester or term. These payments will be made during the month immediately following the month in which certification is received from the educational institution that the veteran has enrolled in and is pursuing a program at the institution.

* * * * *

(j) *Advance payment.* * * *

(2) *Payment.* Upon receipt of an application and if there is no evidence in the veteran's, serviceman's, or servicewoman's file showing that he or she is not eligible for such an advance the check for the allowance, made payable to the veteran, serviceman or servicewoman shall be mailed to the institution for delivery to the veteran, serviceman or servicewoman upon registration. No delivery by the institution shall be made more than 30 days in advance of commencement of his or

her program. If delivery is not made within 30 days after commencement of the program, the institution shall return the check to the Veterans Administration. The Director of the regional office or Veterans Administration center of jurisdiction may direct that advance payments shall not be made to veterans and other eligible persons if the institution demonstrates an inability to comply with these requirements, if the institution fails to adequately provide for the safekeeping of the checks prior to delivery to the student or return to the Veterans Administration, or if he or she determines, based upon compelling evidence, that the institution demonstrates its inability to discharge its responsibilities under the advanced payment program.

(i) *Veterans.* The amount of the payment is not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Subsequent payments shall be made each month in accordance with provisions set out in § 21.4138, 21.4203, 21.4204, and 21.4205. Final payment may be withheld until certification is received that the veteran pursued his or her course and any necessary adjustments made.

(ii) *Servicemen and servicewomen on active duty.* The payment will be in a lump sum based upon the amount payable for the entire quarter, semester, or term, as applicable. The application must be endorsed by the school to verify information needed to determine the lump-sum payment.

(iii) *Exception.* Notwithstanding any provision of this section or any other section of Title 38, Code of Federal Regulations, on and after June 1, 1977, no advance payment of benefits shall be made, unless the individual shall first specifically request such a payment and the educational institution at which the veteran or eligible person is accepted or enrolled has agreed to, and can satisfactorily, carry out the provisions of 38 U.S.C. 1780(d) (5) (B) and (C) and (6) pertaining to receipt, delivery or return of advance checks and certifications of delivery and enrollment. Furthermore, all other payments made on or after that date shall be made only at the end of the month in which the training for which payment is made shall have occurred.

(iv) *Time of payment.* Advance payment will only be authorized at the beginning of an ordinary school year or at the beginning of any other enrollment period which begins after a break in enrollment of 1 full calendar month or longer. Furthermore, on and after June 1, 1977, all other payments shall be made only at the end of the month in which the training for which payment is made shall have occurred. These exceptions are required by the provisions of Pub. L. 94-502, 90 Stat. 2383. (See §§ 21.4137 and 21.4138.)

* * * * *

(k) *Mitigating circumstances.* Unless there are mitigating circumstances, benefits will not be paid to any veteran for a course from which the student withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation. Mitigating circumstances shall include but not be limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the veteran or other eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the veteran's or eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or a change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the veteran or other eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V, ch. 34, title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) Discontinuance of a course by a school.

(6) Unanticipated active duty military service, including active duty for training. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

44. In § 21.4137, paragraph (a) is revised and paragraphs (g)(4) and (5) and (h) are added so that the revised and added material reads as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. ch. 35

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates:

Type of courses	Monthly rate—effective Oct. 1, 1976
Institutional:	
Full time	$292
¾ time	219
½ time	146
Less than ½ but more than ¼ time	146
¼ time or less	73
Cooperative, other than farm cooperative (full time only).	235
Apprentice or on-job (full time only but see footnote [1] below).	
Payment designated training assistance allowance:	
1st 6 mo	212
2d 6 mo	159
3d 6 mo	106
4th 6 mo and succeeding periods	53
Farm cooperative:	
Full time	235
¾ time	176
½ time	118
Correspondence:	
90 per centum of the established charge for number of lessons completed by eligible spouse or surviving spouse and serviced by the school [2]—allowance paid quarterly.	

[1] See footnote 5 of § 21.4270(i) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser.

(38 U.S.C. 1682, 1732, 1786, 1787; Pub. L. 94-502, 90 Stat. 2383.)

(g) *Advance payment.* * * *

(4) *Exception.* Notwithstanding any provision of this section or any other section of Title 38, Code of Federal Regulations, on and after June 1, 1977, no advance payment of benefits shall be made, unless the individual shall first specifically request such a payment and the educational institution at which the veteran or eligible person is accepted or enrolled has agreed to, and can satisfactorily carry out the provisions of 38 U.S.C. 1780(d) (5) (B) and (C) and (6), pertaining to receipt, delivery or return of checks and certifications of delivery and enrollment. Furthermore, all other payments made on or after that date shall be made only at the end or after the end of the month in which the training for which payment is made shall have occurred.

(5) *Time of payment.* Advance payment will only be authorized at the beginning of an ordinary school year or at the beginning of any other enrollment period which begins after a break in enrollment of 1 full calendar month or longer. Furthermore, on and after June 1, 1977, all other payments shall be made only at the end of the month in which the training for which payment is made shall have occurred. These exceptions are required by the provisions of Pub. L. 94-502, 90 Stat. 2383. See §§ 21.4136 and 21.4138.

(h) *Mitigating circumstances.* Unless there are mitigating circumstances, benefits will not be paid to any eligible person for a course from which the student withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation. Mitigating circumstances shall include but not be limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the eligible person's employment which preclude continu-

ous pursuit of the program. Such conditions are a geographical transfer or a change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V, chapter 35, or under section 1733, Title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) Discontinuance of a course by a school.

(6) Unanticipated active duty military service, including active duty for training. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

45. Section 21.4138 is revised to read as follows:

§ 21.4138 Certifications and release of payments.

Educational assistance allowance will be paid to or on behalf of a veteran or eligible person under chapter 34 or 35 on the basis of the appropriate certification required in §§ 21.4136, 21.4137, 21.4203, 21.4204, and 21.4205 concerning enrollment in or the pursuit of a course during the reporting period.

(a) *Lump sum—in advance.* A certification by an institution that the eligible individual has enrolled will be sufficient to release a lump-sum payment to or on behalf of the individual for the entire quarter, semester or term no earlier than 30 days prior to the date the program of training is to begin, provided that the payment is made before June 1, 1977, and provided the individual is:

(1) A serviceman or servicewoman on active duty training on a half-time or greater basis, or

(2) A serviceman or servicewoman on active duty training in a Predischarge Education Program course, regardless of the training time.

(b) *Lump sum—in month following.* Such a certification by an institution will be sufficient to release the payment of a lump sum to or on behalf of the individual for the entire quarter, semester or term in the month following the receipt of the certification by the Veterans Administration, provided the individual is:

(1) A serviceman or servicewoman who is on active duty and who is training in a non-Predischarge Education Program course on a less than half-time basis,

(2) A veteran or other eligible person who is not on active duty and who is training on a less than half-time basis,

(3) An individual referred to in paragraph (a) of this section who is receiving payment after June 1, 1977, and who has not specifically requested an advance payment as provided in paragraph (d) of this section.

(c) *Payment released prior to June 1, 1977.* Such a certification by an institution will be sufficient to release the payment of educational assistance allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month, to a veteran or other eligible person who is not on active duty and who is training at a half-time or greater rate, provided the payment is made prior to June 1, 1977. Payment for months subsequent to those represented by the advance payment shall be made each month in advance of that month's training subject to submission of reports required from the school and student by §§ 21.4203, 21.4204, and 21.4205, but if the month for which such payment is made is subsequent to May 1977, the payment shall be made in the month immediately following the month in which the training occurs and is certified to the Veterans Administration.

(d) *Payment released subsequent to June 1, 1977.* On and after June 1, 1977, no advance payment will be made to any person who otherwise qualifies for one under either paragraph (a) or (c) of this section, unless the individual specifically requests an advance payment. On and after that date no individual shall be entitled to receive prepayment of benefits for training which occurs in months for which no advance payment is payable and no request for such a payment will be honored.

(e) *Payment for last month of training.* Payment for the last month of the enrollment period will not be released to an individual pursuing an institutional course not leading to a standard college degree until the Veterans Administration has received final certification as required by §§ 21.4203 and 21.4205.

(f) *Payment for intervals between terms.* A certification such as described by this section will result in payment for intervals between individual terms, quarters or semesters in accordance with the following rules:

(1) Payments will be made for such intervals during periods when the schools are temporarily closed under an established policy based upon an Executive order of the President or due to an emergency situation, and such periods shall not be counted as absences for the purposes of § 21.4205.

(2) Payments will be made for intervals between consecutive school terms, quarters or semesters where the veteran or other eligible person transfers from one approved educational institution for the purpose of enrolling in and pursuing a similar course at the second institution, provided that the interval does not exceed 30 days. The days for which such a payment is made will count as absences for the purposes of § 21.4205. If the transfer is made to another school and the program in which the student will be enrolled at the second institution is different from that he or she was pursuing at the first school, no payment may be made for the interval.

(3) Payments will be made for periods between a semester, term, or quarter where the educational institution certifies the enrollment of the veteran or eligible person on an individual term, quarter or semester basis, if the interval does not exceed 1 full calendar month, except as provided in paragraph (f)(3) (i) through (iii) of this section. The days for which payment is made will count as absences for the purposes of § 21.4205.

(i) No payment will be made for an interval between terms, quarters or semesters, if the student is training at less than a half-time rate, or is on active duty, even if the interval does not exceed 1 full calendar month.

(ii) No payment will be made for an interval between terms, quarters or semesters, if the student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period.

(iii) No payment will be made for an interval between terms, semesters, or quarters, if the veteran or eligible person will exhaust his or her entitlement by receipt of such a payment and it is to the advantage of the individual not to receive payment. (38 U.S.C. 1780; Pub. L. 94-502, 90 Stat. 2383.)

CROSS REFERENCE.—Lump-sum payments. See §§ 21.4136(h) and 21.4137(e) Advance payments and prepayments. See §§ 21.4136(j) and 21.4137(g).

46. In § 21.4145, paragraph (a) is revised to read as follows:

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in the amount of $625 will be paid. An advance payment of $250 will be made for the first 100 hours agreed to be worked. Advances of lesser amounts may be made in return for agreements to perform services for periods of less than 100 hours. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of

the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. (38 U.S.C. 1685; Pub. L. 94-502, 90 Stat. 2383)

* * * * *

47. Section 21.4146 is added to read as follows:

§ 21.4146 Assignments of benefits prohibited.

(a) *General.* Section 3101(a), title 38, United States Code, provides that payments of benefits due or to become due under the laws administered by the Veterans Administration shall not be assigned, except to the extent specifically authorized by law. No law specifically authorizes assignments of educational assistance allowances payable under chapters 34, 35 and 36, title 38, United States Code, and therefore none shall be made.

(b) *Designating an attorney-in-fact.* In any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(c) *Arrangements amounting to an assignment.* Payments may be made to a post office box address or a bank address only if the educational institution attests that it has not entered into an assignment agreement with the student, and is not the attorney-in-fact of the student with power to negotiate an educational assistance check on behalf of the student and is not otherwise able to control the proceeds of the benefits check. Such statements shall be subject to review and when determined to be false, may be cause for creation of an overpayment to the account of the veteran or other eligible person, for which the educational institution may be liable under the provisions of § 21.4009.

(d) *Correspondence school addresses.* A request by a veteran or other eligible person to send the benefit check payable to him or her at an address which is an educational institution primarily engaged in correspondence course instruction will be presumed not to be the actual address of the veteran or other eligible person and will not be honored. Benefits checks will not be sent to the veteran or other eligible person in that event until a new address is provided designating the individual's mailing address.

(e) *Referral to Committee on Educational Allowances.* When the evidence of record indicates that an educational institution has violated the terms of this section, the matter will be referred to the field station Committee on Educational Allowances as provided in §§ 21.4207 and 21.4202(b)(4). (38 U.S.C. 3101(a); Pub. L. 94-502, 90 Stat. 2383.)

48. In § 21.4153, paragraph (c)(3) is revised and (c)(4) is added so that the revised and added material reads as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) *Reimbursable expenses.* * * *

(3) *Administrative expenses.* An allowance for administrative expenses for which payment may be authorized will be determined in accordance with the formula contained in this subparagraph. Salary cost includes basic salary plus fringe benefits such as Social Security, retirement, and health, accident or life insurance which is provided all similarly circumstanced State employees.

Total salary cost reimbursable	Allowable for administrative expense
$5,000 or less	$600.
Over $5,000 but not exceeding $10,000.	$1,080.
Over $10,000 but not exceeding $35,000.	$1,080 for the first $10,000 plus $1,000 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000.	$6,535.
Over $40,000 but not exceeding $75,000.	$6,535 for the first $40,000 plus $865 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000.	$12,960.
Over $80,000	$12,960 for the first $80,000 plus $755 for each additional $5,000 or fraction thereof.

(4) *Subcontracts.* The State approving agency may also be reimbursed for work performed by a subcontractor provided:

(i) The work has a direct relationship to the requirements of chapters 32, 34, 35, or 36 of title 38, United States Code, and

(ii) The Director, Education and Rehabilitation Service has approved the subcontract in advance. (38 U.S.C. 1774; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

49. In § 21.4200, paragraph (e) is revised and paragraphs (h), (i), (j), (k), (l) and (m) are added so that the added and revised material reads as follows:

§ 21.4200 Definitions.

* * * * *

(e) *Standard college degree.* The term means an associate or higher degree awarded by:

(1) An institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or

(2) An institution of higher learning that is a "candidate" for accreditation, as that term is used by the regional or the national accrediting agencies; or

(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs. (38 U.S.C. 1652; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

(h) *Institution of higher learning.* The term means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency, or, it is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution. Such term shall include a hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a postsecondary degree. (38 U.S.C. 1652; Pub. L. 94-502, 90 Stat. 2383.)

(i) *Audited course.* The term means any credit course which a student attends as a listener only with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. See § 21.4252(i). (38

U.S.C. 1780(a)(3); Pub. L. 94-502, 90 Stat. 2383.)

(j) *Nonpunitive grade.* The term means any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from the course, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit toward the school's requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average. Therefore, it has the same effect as an audited course. See § 21.4135(e). (38 U.S.C. 1780(a)(4); Pub. L. 94-502, 90 Stat. 2383.)

(k) *Punitive grade.* The term means a grade assigned for pursuit of a course which is used in determining the student's overall progress toward completion of the school's requirements for graduation. Unlike the nonpunitive grade, the punitive grade does affect the criteria to be met by the student for graduation, i.e., it is a factor in computing the student's grade average or grade point average, for example. For this reason it is not the same as an audited course, since it does have an effect upon the student's ability to meet the school's criteria for graduation. See § 21.4135(e). (38 U.S.C. 1780(a)(4); Pub. L. 94-502, 90 Stat. 2383.)

(l) *Drop-add period.* The term means a reasonably brief period at the beginning of a term, not to exceed 30 days, officially designated by a school for unrestricted enrollment changes by students. (38 U.S.C. 1780(a)(4); Pub. L. 94-502, 90 Stat. 2383.)

(m) *Normal commuting distance.* Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:

(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or

(2) Other comparable evidence clearly shows that students commute regularly between the two locations. (38 U.S.C. 1789(c); Pub. L. 94-502, 90 Stat. 2383.)

50. Section 21.4201 is revised to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* No enrollment in any course may be approved for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, the Veterans Administration pursuant to title 38, United States Code, and/or the grants of any other Federal agency, except:

(1) This restriction shall not apply to any farm cooperative course, any course of Special Assistance for the Educationally Disadvantaged, offered pursuant to subchapter V, chapter 34, title 38, United States Code, or any approved course offered under contract with the Department of Defense which is on or immediately adjacent to a military base and which is available only to active-duty military personnel and their dependents and has been approved by the State approving agency of the State where the base is located or the State of the parent school if the course is offered overseas.

(2) The restriction may be waived in whole or part.

(b) *Status of school.* The requirements of this section apply to courses offered by all educational institutions except those set out in paragraph (a)(1) of this section, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, public and/or tax-supported.

(c) *Identification of affected courses.* An 85-15 percent ratio must be computed for each course of study or curriculum leading to a separate approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions must have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(1) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(i) In 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(ii) Students attending 4-year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85-15 percent computation must be made for each specific curriculum, i.e. BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(2) NCD (Noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85-15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject etc.). Branch or extension courses will be computed separately from courses at the main campus. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(d) *Waivers by the Administrator.* The following waivers have been granted by the Administrator:

(1) Waive counting all graduate students in receipt of any Federal assistance (other than Veterans Administration benefits) and any support from the institution. No specific application for this waiver is required from the school.

(2) Waive counting all undergraduate and noncollege degree students, receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike. An application will not be required for this type of waiver.

(3) Waive counting students in receipt of all types of Federal assistance other than Basic Educational Opportunity Grants and Supplementary Educational Opportunity Grants. Specific examples of this type of waiver are benefits administered by the Social Security Administration, Federal grants supporting specific programs such as law enforcement (LEEP, Safe Cities Act grants), nursing, Government Employees' Training Act support and tuition aid paid by an armed service to active duty personnel. No specific application is required for this waiver.

(4) Waive counting students enrolled in all courses of flying clubs established, organized, and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities.

(5) Waive application of the formula to courses open only to military personnel, their dependents, and civilian employees of a military installation, when the course is offered on or adjacent to the base, under contract with the Department of Defense, and the branch or extension is approved by the State approving agency in the State where the military installation is located. In the case of foreign military installations, approval will be by the State approving agency in the State where the parent school is located. If the course is offered to other students, the 85-15 percent requirement must be met. A specific application will not be required for this waiver.

(e) *Waivers by field station Directors.* Field station Directors are delegated authority to grant waivers under the following conditions:

(1) Notwithstanding any type of waiver provided for in paragraphs (d) and (e) of this section, station Directors are authorized to waive 85-15 percent computations for institutions which certify that 35 percent or less of their enrollment receives Veterans Administration educational assistance (compute main campuses and branches separately). Such certifications must be provided to the Veterans Administration on a continuing basis in accordance with the time limits shown in paragraph (e)(2)(iii) of this section. Such waiver will not be granted for any course in which the percentage of Veterans Administration-supported veterans enrolled exceeds 85 percent. Station Directors are responsible for taking forceful action to identify specific courses of study which may exceed 85 percent Veterans Administration-supported enrollment even if such courses are offered by schools having 35 percent or fewer veterans in the total school population. All station Directors will require full 85-15 percent ratio computations for courses with extraordinarily disproportionate Veterans Administration-supported enrollments, to show compliance with the law.

(2) Waive computation of the 85-15 percent ratio, as to undergraduate or noncollege students, in any course offered by an institution of higher learning or noncollege degree school if 35 percent or fewer of the students in the course receive Veterans Administration education benefits, and the percentage of Veterans Administration-supported students in the course plus the percentage of the school's total enrollment in all courses at all locations receiving Basic Educational Opportunity Grants or Supplementary Educational Opportunity Grants totals 85 percent or less. For example, if a school finds that 29 percent of the enrollees in an AA (Associate of Arts) in business degree curriculum receive Veterans Administration payments and 52 percent of the school's total enrollment receives Basic Educational Opportunity Grants and Supplementary Educational Opportunity Grants support, the total of the percentages (81 percent) qualifies that AA (Associate of Arts) in business degree for a waiver of any further 85-15 percent ratio computation.

(i) Satisfactory compliance with the 85-15 percent requirements is assumed when the preceding conditions of paragraph (e)(2) of this section are fulfilled. If the total of the two percentages exceeds 85 percent, the ratio must be computed for that course with Basic Educational Opportunity Grants and Supplementary Educational Opportunity Grants recipients included in the 85 percent portion of the ratio.

(ii) When more than 35 percent of the students enrolled in a course receive Veterans Administration assistance, the ratio must be computed for that course with Basic Educational Opportunity Grants and Supplementary Educational Opportunity Grants recipients included in the 85 percent portion of the ratio unless waiver has been granted under paragraph (e)(1) of this section.

(iii) This count of Veterans Administration-supported students, school-supported students, and Basic Educational Opportunity Grants or Supplementary Educational Opportunity Grants recipients must be computed within 30 days of the beginning of each regular academic term (summer sessions excluded) for application to the next term for the purpose of waiving the computation of an 85-15 percent ratio for each affected course. For schools not operating on a term basis, counts as of the last day of the quarter must be completed within 30 days of the end of each calendar quarter (March, June, September, December). If this count is not submitted to the field station Director for a course which previously had its ratio computation waived, under paragraph (e)(1) or (2) of this section, a complete computation will be required before any new enrollment of eligible veterans may be processed for that course.

(3) Schools which offer courses not meeting the 85-15 percent requirement for any reason may apply to the appropriate station Director for a total waiver of the requirements except for Veterans Administration benefits. The school must state the specific basis of the total waiver request, show the computation of the ratio for the affected course, and submit sufficient information to allow the field station Director to judge the merits of the request against the criteria shown in paragraph (e)(3)(i) through (v) of this section. The Director should use all Veterans Administration sources as well as data and statements submitted by the school when considering a total waiver request in relation to these criteria:

(i) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Office of Education, if applicable. Otherwise, the school should submit data sufficient to allow the field station Director to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published in Part 169, Subpart B, Title 45, Code of Federal Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(iii) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the Veterans Administration.

(iv) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the first year of the course of study and completing the entire course, results of the 50 percent employment survey for vocational objective courses, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(v) Waivers will not be granted by the field station Director for courses in which the percentage of veterans enrolled exceeds 85 percent, except in

courses offered by military aero clubs or in courses exempted by law in paragraph (a)(1) of this section. If more than 85 percent of the students in any other course are receiving benefits from the Veterans Administration and the school applied for a waiver, the field station Director will submit the matter with his or her recommendation to the Director, Education and Rehabilitation Service for a determination.

(4) All submissions required for limited waiver of 85-15 percent requirements under the criteria in paragraph (e)(3)(i) through (v) or otherwise under paragraph (e) of this section will be made by schools to Directors of the respective field stations of jurisdiction. If a school disagrees with a Director's determination concerning waiver, it may request that the application along with the Director's recommendation be forwarded to Central Office for administrative review.

(f) *Records of waivers.* All waivers of 85-15 percent requirements, whether limited or total and whether granted by a field station Director under the authority delegated to him or her by the Administrator or by a Central Office decision upon administrative review, will be made part of the school folder and will be subject to annual review for continuation.

(g) *Countable assistance for 85-15 percent computations.* In conjunction with the waivers provided for in paragraphd (d) and (e) of this section, the following forms of assistance must be counted for determining compliance with 85-15 percent requirements unless computation is waived under paragraph (e)(1) of this section:

(1) Accredited graduate and advanced professional courses: Count only Veterans Administration assistance provided under chapters 31, 32, 34, and 35, except for courses offered on or adjacent to a military installation as explained in paragraph (a)(1) of this section.

(2) All other courses:

(i) Count Veterans Administration assistance provided under chapters 31, 32, 34, and 35, except farm cooperative, assistance under subchapter V of chapter 34, and courses offered on or adjacent to a military base open to only active duty personnel and their dependents (and civilian employees of the base, if waived by the field station Director or Central Office upon administrative review).

(ii) Count Basic Educational Opportunity Grants and Supplementary Educational Opportunity Grants as Federal assistance, unless computation for a course is waived by the field station Director (see paragraph (e)(2) of this section) under authority delegated by Central Office.

(iii) Count all support offered by the institution, unless covered by Administrator's waiver under paragraph (d)(2) of this section or waived by the field station Director or Central Office.

(h) *Computation of 85-15 percent ratio.* To determine if the requirement has been met (except as provided in paragraph (e)(2) of this section) the number of students in a course who are not veterans, are not receiving a form of Federal or institutional aid (exclusive of waivers and statutory exemptions), or are receiving a form of aid but have been waived as provided in paragraph (d) or (e) of this section, will be compared to the total number of students enrolled in the course. If the non-Veterans Administration, nonsupported students, and supported but waived students do not comprise at least 15 percent of the total enrollment, the 85-15 percent requirement has not been met for that course.

(1) If all students in a course are full-time trainees, the ratio is computed simply by dividing the sum of all non-Veterans Administration, nonsupported and supported but waived students by the total number of students: e.g. 20 non-Veterans Administration, nonsupported and waived students divided by 100 total students equals .20; the 15 percent requirement would be met in this case.

(2) Ratios which include less than full-time students may be computed by comparing full-time equivalent non-Veterans Administration, nonsupported and waived students to the total number of full-time equivalent students. For example, assume that there are 100 students enrolled in a particular course of study; 75 are full-time students and 25 are half-time. The total full-time equivalency enrollment would be 75 plus 12.5 or 87.5. Similarly, if 20 non-Veterans Administration, nonsupported or waived students are full-time trainees and five are half-time students, the non-Veterans Administration, nonsupported or waived full-time equivalency would be 20 plus 2.5 or 22.5. The ratio is computed by dividing non-Veterans Administration, nonsupported and waived equivalencies by total full-time equivalencies: 22.5 divided by 87.5 equals .26. In this example the 15 percent non-Veterans Administration requirement would be fulfilled.

(3) The 85-15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by countable students in the preceding 30 days to the total number of hours of training received by all students in the same period. Hours of training:

(i) In the private pilot's course shall be excluded;

(ii) Considered for students enrolled in courses approved under Part 141, Title 14, Code of Federal Regulations (the Federal Aviation Administration Regulations) shall be actual hours of logged instructional flight time or charges; and

(iii) Considered for students enrolled in courses not approved under Part 141, Title 14, Code of Federal Regulations, such as in courses for navigator or flight engineer, shall include ground training time in addition to actual logged instructional flight time or charges.

(i) *Certifications of 85-15 percent compliance.* Results of the ratio computation for each affected course must be submitted to the appropriate field station no later than 30 days after the beginning of each regular school term (excluding summer sessions) or before the beginning date of the next term, whichever occurs first. Certification for courses not offered on a term basis must be received by the Veterans Administration no later than 30 days after the end of each calendar quarter.

(1) New enrollments of eligible veterans in a course will be processed by the Veterans Administration based on submission of the most recent available computation and satisfactory 85-15 percent ratio. However, no benefit will be paid for the term when the most recent computation establishes that the school does not have a satisfactory 85-15 percent ratio, except for those enrollments which have a beginning date prior to or the same as the date the school completed this computation. If a school fails to submit a timely computation, no benefits will be paid for any enrollment with a beginning date subsequent to the end of the last period for which a satisfactory computation was in force until a satisfactory computation has been certified by the school. Further enrollments for the current or future terms may be processed once again only after the school submits a certification showing that the proper ratio has been reestablished. When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment submitted after reestablishment must be individually computed into the ratio to ensure that the 85 percent limitation is not again immediately exceeded. Individual computations will be required until the end of the term for which the ratio was reestablished.

(2) No student will be counted more than one time in any computation of an 85-15 percent ratio. If a student receives both Veterans Administration or other countable benefits and a noncountable or waived type of benefit, that student must be included in the countable (85 percent) portion of the ratio.

(3) Once a student is properly enrolled in a course, either before December 1, 1976, or after November 30,

1976, in a course which meets the 85–15 percent requirement, such a student may not have benefits for that course terminated because the 85–15 percent requirement is subsequently not met, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness. (38 U.S.C. 1673(d); Pub. L. 94–502, 90 Stat. 2383.)

51. In § 21.4202, paragraph (c) is revised to read as follows:

§ 21.4202 Overcharges; restrictions on enrollments.

* * * * *

(c) *Restrictions; proprietary schools.* Enrollment will not be approved for any veteran or eligible person under the provisions of chapter 34 or 35 respectively, in any proprietary school of which the veteran or eligible person is an official authorized to sign certificates of enrollment or monthly certificates of attendance, an owner or an officer.

52. In § 21.4203, paragraphs (b)(1) and (c) are revised and paragraph (d)(3) is added so that the added and revised material reads as follows:

§ 21.4203 Reports by schools; requirements.

* * * * *

(b) *Entrance or reentrance.* * * *

(1) Schools organized on a term, quarter or semester basis shall generally report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If a certification covers two or more terms, the school will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month. No allowances are payable for these intervals. The school will report the period between each term, quarter or semester, if the eligible veteran or student elects not to be paid for the intervals between terms. Where the student is a veteran or eligible person pursuing a program on a less than half-time basis or is a serviceman or servicewoman, a separate enrollment certification will be required for each term, quarter, or semester.

(i) At the discretion of the Administrator, payment may be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(ii) Where a veteran or an eligible person, who is pursuing a course leading to a standard college degree, transfers between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance, be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 calendar days, following the termination date of the school term of the first institution. (38 U.S.C. 1780; Pub. L. 94–502, 90 Stat. 2383)

* * * * *

(c) *Course changes.* Any changes in the number of credit hours or the clock hours of attendance or instruction or any other modification in the course as certified at enrollment, including nonpunitive grades, must be reported promptly to the Veterans Administration. In institutions this reporting requirement will be satisfied if the official date of the change of status is reported in accordance with § 21.4253(d) or 21.4254(c)(7).

(d) *Interruptions and terminations.* When a veteran or eligible person interrupts or terminates his or her training for whatever reason, including unsatisfactory conduct or progress, this fact must be reported promptly to the Veterans Administration.

* * * * *

(3) If the educational institution is making a report pursuant to this paragraph or paragraph (c) of this section, a statement of mitigating circumstances known to the educational institution, where appropriate, shall be included. Mitigating circumstances are relevant to changes in status which are withdrawals. They are also relevant to changes in status resulting from nonpunitive grades.

* * * * *

53. In § 21.4205, paragraph (c)(5) is added to read as follows:

§ 21.4205 Absences.

* * * * *

(c) *Reporting.* * * *

(5) Where a veteran or eligible person, who is pursuing a course not leading to a standard college degree, transfers between consecutive school terms within a school year from one approved institution to another institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of the educational assistance allowance, be considered to be enrolled at the first institution during the interval if the interval does not exceed 30 calendar days following the termination date of the school term of the first institution, but such periods shall be counted as absences for the purposes of this section. (38 U.S.C. 1780(a); Pub. L. 94–502, 90 Stat. 2383.)

54. In § 21.4206, paragraph (a) is revised to read as follows:

§ 21.4206 Reporting fee.

* * * * *

(a) Except as provided in paragraph (b) of this section, the reporting fee will be computed for each calendar year by multiplying $5 by the number of eligible veterans and eligible persons enrolled under chapter 34, chapter 35, or chapter 36 on October 31 of that year.

* * * * *

55. In § 21.4208, paragraph (a) is revised to read as follows:

§ 21.4208 Central Office Education and Training Review Panel.

(a) *Purpose.* The panel will receive evidence and hear the testimony of witnesses and the arguments of interested parties regarding matters considered by the field station Committee on Educational Allowances and make recommendations to the Director, Education and Rehabilitation Service, in connection with such matters which are before him or her for final administrative determination under § 21.4201, 21.4202, or 21.4207.

* * * * *

56. In § 21.4209, paragraphs (a), (b)(2), and (f) are revised and paragraph (b)(4), (5), (6), and (7) is added so that the added and revised material reads as follows:

§ 21.4209 Examination of records.

(a) *Availability.* Notwithstanding any other provision of law, the records and accounts of educational institutions pertaining to eligible veterans or eligible persons who received educational assistance under chapters 31, 32, 34, 35, or 36, title 38, United States Code, as well as the records of other students which are necessary to enable the Veterans Administration to ascertain institutional compliance with the requirements of these chapters, shall be available for examination by duly authorized representatives of the Government. (38 U.S.C. 1790; Pub. L. 94–502, 90 Stat. 2383.)

(b) *Type of records.* Each school will upon request of duly authorized representatives of the Government make available for examination all appropriate records and accounts, including but not limited to:

* * * * *

(2) Records of previous education or training of veterans and eligible persons at the time of admission as students and records of advance credit, if any, granted by the school at the time of admission.

* * * * *

(4) Records of all advertising, sales or enrollment materials as required by § 21.4252(h) and section 1796(b), title 38, United States Code.

(5) Records and computations showing compliance with the requirements of § 21.4201 regarding the 85–15 percent ratio of students for each course.

(6) Records necessary to demonstrate compliance with the requirements of § 21.4252(e) pertaining to the time necessary to complete a correspondence course.

(7) Records necessary to demonstrate compliance with the requirements of § 21.4252(g) pertaining to employment of graduates of the course.

* * * * *

(f) *Retention of records.* The records and accounts, including those pertaining to students not receiving benefits from the Veterans Administration, as described in this section, pertaining to each period of enrollment of a veteran or eligible person, will be kept intact and in good condition at the school for at least 3 years following the termination of such enrollment period. Longer retention will not be required unless a written request is received from the General Accounting Office or the Veterans Administration not later than 30 days prior to the end of the 3-year period.

§ 21.4233 [Amended]

56a. In § 21.4233(a)(1) is amended by deleting § 21.4270 (c) and (g) and inserting "§ 21.4270 (e) and (i)" in the first sentence.

57. In § 21.4235, paragraph (a)(1) is revised and paragraph (j) is added so that the revised and added material reads as follows:

§ 21.4235 Predischarge Education program (PREP) and Special Assistance for Educationally Disadvantaged Veterans; Chapter 34.

(a) *Enrollment.* Enrollment of a veteran may be approved in any elementary, secondary, preparatory, refresher, remedial, deficiency, or special educational assistance course not otherwise prohibited, regardless of his or her previous educational experience;

(1) While he or she is on active duty and meets the eligibility requirements of § 21.1040(e)(3) and chapter 32, title 38, United States Code, if such course or courses (but not including correspondence courses) are required to receive a secondary school diploma, or if such course or courses (including individual unit subjects within a General Education Development (G.E.D.) examination program) are required for or preparatory to the pursuit of an appropriate course or training program in an approved educational institution or training establishment; or

* * * * *

(j) *Enrollment restrictions.* After October 31, 1976, no person other than a member of the Armed Forces described in section 1631(b), title 38, United States Code, shall be permitted to enroll or reenroll in any course provided under the authority of subchapter VI, chapter 34, title 38, United States Code. See § 21.5040. (38 U.S.C. 1696(d); Pub. L. 94–502, 90 Stat. 2383.)

58. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

* * * * *

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or § 21.4137 the cost of such tutorial assistance in an amount not to exceed $65 per month will be authorized.

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of $780. (38 U.S.C. 1690, 1692, 1693; Pub. L. 94–502, 90 Stat. 2383.)

59. In § 21.4251, paragraphs (a) and (f) are revised to read as follows:

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(1) Any course to be pursued in a public or other tax-supported educational institution including the flying clubs which are the subject of § 21.4201(d)(4);

(2) Any course which is similar in character to instruction previously offered by the school for more than 2 years;

(3) Any course which has been offered by a school for a period of more than 2 years, notwithstanding that the school has moved to another location within the same general locality, or where the school has made a complete move with substantially the same faculty, curricula, and students, without a change in ownership;

(4) Any course which is offered by a nonprofit school of college level and which is recognized for credit toward a standard college degree;

(5) Any course for the educationally disadvantaged or Predischarge Education Program offered by a proprietary nonprofit educational institution, at the principal or branch location, when the institution offering the course has been in operation for more than 2 years; or

(6) Any course offered by an educational institution under a contract with the Department of Defense that (i) is given on, or immediately adjacent to, a military base, (ii) is available only to active duty military personnel and/or their dependents and (iii) has been approved by the State approving agency of the State in which the base is located or by the State approving agency in the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. (38 U.S.C. 1789(b); Pub. L. 94–502, 90 Stat. 2383.)

* * * * *

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a) (1), (2), (3), or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as provided in the following subparagraphs:

(1) This requirement will apply to any course offered by a branch or extension of a public or other tax-supported institution where the branch or extension is located outside of the area of the taxing jurisdiction providing support to such institution;

(2) This requirement will apply to any course offered by a branch or extension of a proprietary profit or proprietary nonprofit educational institu-

tion where the branch or extension is located beyond the normal commuting distance of such institution and to a proprietary profit educational institution, even if the branch or extension is located within commuting distance;

(3) Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the 2-year limitation if all of the following conditions are met:

(i) The school has been in operation for a period of 2 years or more;

(ii) The school has reached the limit of its enrollment capacity in its present facilities;

(iii) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(iv) The additional facilities are within normal commuting distance of the present facilities. (38 U.S.C. 1789; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

60. In § 21.4252, paragraph (e), (f)(1), and (h) are revised and paragraphs (i) and (j) are added so that the added and revised material reads as follows:

§ 21.4252 Courses precluded.

* * * * *

(e) *Correspondence courses.* Enrollment in such courses will not be approved for eligible children under chapter 35. Nor shall any veteran or eligible spouse or surviving spouse be enrolled in a program of education exclusively by correspondence as authorized under section 1786, title 38, United States Code, and § 21.4256 or for the pursuit of a correspondence portion of a combination correspondence-residence course leading to a vocational objective as authorized under § 21.4279 if the normal period of time required to complete the correspondence course or portion of the course is less than 6 months in duration. The normal completion time will be considered to be 6 months or more if 80 percent or more of those completing the correspondence course over the past 2 years have required 6 months or more to complete all lessons. See §§21.4256 and 21.4279. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

(f) *Courses on secondary level; chapter 35.* (1) A curriculum offered by a public or private school at the secondary school level leading to the completion of the eligible child's regular secondary school education, that is, leading to a high school diploma or its equivalent, may not be pursued as a program of education or as part of a course of education of an eligible child under chapter 35. An eligible spouse or surviving spouse may pursue secondary school courses only under the Special Assistance for the Educationally Disadvantaged program. See § 21.4237.

* * * * *

(h) *Erroneous, deceptive, misleading practices.* Enrollment will not be approved in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation. The services and facilities of the Federal Trade Commission shall be utilized by the Veterans Administration, where appropriate, pursuant to an agreement to carry out investigations and to make determinations under this paragraph as provided by section 1796, title 38, United States Code. To ensure compliance with this section, any institution offering courses approved for the enrollment of veterans or eligible persons shall maintain a complete record of all advertising, sales, or enrollment materials (and copies of each) utilized by or on behalf of the institution during the preceding 12-month period. Such record shall be available for inspection by the State approving agency or the Veterans Administration. Such materials shall include but are not limited to any direct mail pieces, brochures, printed literature used by sales persons, films, video tapes, and audio tapes disseminated through broadcast media, material disseminated through print media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution. (38 U.S.C. 1796; Pub. L. 94-502, 90 Stat. 2383.)

(i) *Audited courses.* The school's certifications shall exclude courses which are being audited by the veteran or eligible person, since no educational assistance allowances shall be paid for such courses. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

(j) *Nonpunitive graded courses.* The school shall report any course for which a nonpunitive grade is assigned and no payment shall be authorized for such a course. If payment has already been made, in whole or in part, by the Veterans Administration at the time the grade is assigned, an overpayment shall be created against the account of the student for such a course, unless the Veterans Administration determines there are mitigating circumstances. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

61. In § 21.4253, paragraph (d) is revised to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency:

(1) The institution has submitted to the State approving agency copies of its catalog or bulletin which is certified as true and correct in content and policy by an authorized representative and the publication contains:

(i) Institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress and a description of the probationary period, if any, allowed by the institution, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student), and

(ii) Institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.

(2) Adequate records are kept by the school to show the progress of each veteran or eligible person. The records must be sufficient to show continued pursuit at the rate for which enrolled and the progress being made. They must include final grade in each subject for each term, quarter, or semester; record of withdrawal from any subject to include the last date of attendance for a resident course; and record of reenrollment in subjects from which there was a withdrawal; and may include such records as attendance for resident courses, periodic grades and examination results.

(3) The school maintains a written record of previous education and training of the veteran or eligible person which clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately, and the person and the Veterans Administration so notified. The record must be cumulative in that the results of each enrollment period (term, quarter or semester) must be included so that it shows each subject undertaken and the final result, i.e., passed, failed, incomplete or withdrawn. (38 U.S.C. 1775(b).)

(4) The school enforces a policy relative to standards of conduct and progress required of the student. The

school policy relative to standards of progress must be specific enough to determine the point in time when educational benefits should be discontinued, pursuant to 38 U.S.C. 1674 when the veteran or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, a 4-year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A.

(5) The school maintains adequate attendance records for veterans and eligible persons enrolled in resident courses not leading to a standard college degree.

* * * * *

62. Section 21. 4256 is revised to read as follows:

§ 21.4256 Correspondence courses.

(a) A school desiring to enroll veterans under chapter 34 and spouses or surviving spouses under chapter 35 for correspondence courses or courses of combined correspondence-residence may have such courses approved when the courses and the school meet the requirements of §§ 21.4252, 21.4253, or 21.4254, and 21.4279 as applicable, and when its application demonstrates that the course is satisfactory in all elements, including a certification as to the normal period of time required to complete the course and proof that the certification has been submitted to the Veterans Administration. Such a course must require not less than 6 hours of preparation per week over any 26-week period and must require 6 or more months to complete. No more than 20 percent of the students pursuing such a course should be able to complete the course in less than 6 months for the normal length to be certified as 6 months or more. The determination of this factor shall be based upon the records of the school for the two immediately preceding years. (38 U.S.C. 1780(a)(5); Pub. L. 94-502, 90 Stat. 2383.)

(1) The enrollment agreement shall disclose fully the obligations of the institution and the veteran, spouse or surviving spouse and shall display in a prominent place on the agreement the conditions for affirmance, termination, refund, and payment of the educational allowance by the Veterans Administration.

(2) A copy of the agreement shall be given to the veteran, spouse or surviving spouse when it is signed.

(3) The agreement shall not be effective unless the veteran, spouse or surviving spouse after the expiration of 10 days after the agreement is signed, shall have signed and submitted to the Veterans Administration a written statement, with a signed copy to the institution, specifically affirming the agreement.

(4) Upon notification of the institution by the veteran, spouse or surviving spouse of an intention not to affirm the agreement, any fees paid by the individual shall be returned promptly in full to him or her.

(5) Upon termination of the affirmed agreement for training in an accredited course by the veteran, spouse or surviving spouse, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or $50, whichever is lesser, may be charged him or her. When the agreement is terminated after completion of less than 25 percent of the lessons of the course, the institution may retain the registration fee plus 25 percent of the tuition for the course. When the agreement is terminated after 25 percent but less than 50 percent of the lessons are completed, the institution may retain the registration fee plus 50 percent of the tuition for the course. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(6) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, spouse or surviving spouse than the pro rata basis as provided in paragraph (a)(5) of this section, such established policy will be applicable.

(7) Any institution which fails to forward any refund due to the veteran, spouse or surviving spouse within 40 days after receipt of a notice of termination or disaffirmance, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this section.

(b) Whenever the State approving agency approves a correspondence course for training of veterans under chapter 34 and eligible spouses and surviving spouses under chapter 35, it shall immediately notify the Veterans Administration, identifying the school, the course or courses approved, and the educational or vocational objective of each approved course.

62a. Section 21.4266 is added to read as follows:

§ 21.4266 Courses offered at subsidiary branches or extensions.

(a) *General.* A State approving agency in approving a course offered at a subsidiary branch or extension of an educational institution may either approve the course separately from the course approved for the educational institution's parent facility (either its main campus or its principal teaching location in a State), or it may combine the approval for courses offered at the branch or extension with that for the courses offered at the educational institution's parent facility. The choice made by the State approving agency shall be governed by the provisions of this section.

(b) *Combined approval.* If the approval for the courses offered at a branch or extension is combined with the approval for the courses offered at the educational institution's parent facility, the branch or extension does not need to have its own administrative capability. In these cases the State approving agency will list the branches or extensions and the courses approved at each on the notice of approval sent to the educational institution pursuant to § 21.4258. The approval of courses offered at a branch or extension may be combined with the approval of courses offered at a parent facility only when the branch or extension is located in the same State as the parent facility and one of the following conditions exist:

(1) The course offering at the branch or extension consists of a small number of unit subjects which do not comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis;

(2) The course offering at the branch or extension is being given on a temporary basis (the educational institution is contemplating no more than a few cycles of training);

(3) The facilities at the branch or extension contain insufficient space for an administrative capability to be developed.

(c) *Separate approval.* If the course offered at a subsidiary branch or extension cannot qualify under paragraph (b) of this section for a combined approval with the courses offered at the educational institution's parent facility, the State approving agency can only approve the courses separately. Such a course may not be approved if the branch or extension neither has administrative capability nor can qualify for an exception to having administrative capability.

(1) A branch or extension is considered to have an administrative capability when:

(i) The branch or extension maintains all records and accounts required by § 21.4209;

(ii) The branch or extension designates a named certifying official;

(iii) The branch or extension is able to furnish to the Veterans Administration without resort to the parent school all reports and certifications required by §§ 21.4203, 21.4204 and 21.4205;

(iv) The branch or extension maintains a local mailing address.

(2) Notwithstanding any other provisions of this paragraph, courses may be approved separately at a branch or extension without administrative capability if the parent facility:

(i) Maintains a centralized record-keeping system;

(ii) Can identify the records of students at each branch;

(iii) Specifies the branch location when certifying enrollments. (38 U.S.C. 1772, 1789(c).)

63. Section 21.4270 is revised to read as follows:

§ 21.4270 Measurement of courses.

Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

COURSES		Full time	3/4 time	1/2 time	Less than 1/2 more than 1/4 time	1/4 time or less
Kind of school	Kind of course					
(a) Trade or technical – nonaccredited (includes college courses not leading to a standard degree)[8]	Shop practice an integral part of course	30 clock hours attendance with not more than 2-1/2 hours rest period allowance	22 through 29 clock hours attendance with not more than 2 hours rest period allowance	15 through 21 clock hours attendance with not more than 1-1/4 hours rest period allowance	8 through 14 clock hours attendance with not more than 3/4 hours rest period allowance	1 through 7 clock hours attendance
	Theory and class instruction predominates[1]	25 clock hours net instruction	18 through 24 clock hours net instruction	12 through 17 clock hours net instruction	7 through 11 clock hours net instruction	1 through 6 clock hours net instruction
(b) Trade or technical – accredited (includes college courses not leading to a standard degree[8]	Shop practice an integral part of course[8]	27 clock hours attendance with not more than 2-1/2 hours rest period allowance	20 through 26 clock hours attendance with not more than 2 hours rest period allowance	13 through 19 clock hours attendance with not more than 1-1/4 hours rest period allowance	7 through 12 clock hours attendance with not more than 3/4 hours rest period allowance	1 through 6 clock hours attendance
	Theory and class instruction predominates[1,9]	22 clock hours net instruction	16 through 21 clock hours net instruction	11 through 15 clock hours net instruction	6 through 10 clock hours net instruction	1 through 5 clock hours net instruction
(c) High school-nonaccredited	High school diploma or equivalent	25 clock hours net of instruction or 4 units per year or equivalent[2]	18 through 24 clock hours net of instruction or 3 units per year or equivalent	12 through 17 clock hours net of instruction or 2 units per year or equivalent	7 through 11 clock hours net of instruction or 1 unit per year or equivalent	1 through 6 clock hours net of instruction
(d) High school-accredited	High school diploma or equivalent[9]	22 clock hours net of instruction or 4 units per year or equivalent	16 through 21 clock hours net of instruction or 3 units per year or equivalent	11 through 15 clock hours net of instruction or 2 units per year or equivalent	6 through 10 clock hours net of instruction or 1 unit per year or equivalent	1 through 5 clock hours net of instruction
(e) Collegiate undergraduate	Standard collegiate courses including cooperative and external degree programs[7]	14 semester hours or equivalent[3]	10 through 13 semester hours or equivalent	7 through 9 semester hours or equivalent	4 through 6 semester hours or equivalent	1 through 3 semester hours or equivalent
(f) Collegiate graduate	Standard collegiate graduate courses including law and external degree programs[7]	As in paragraph (e) of this section or certified by responsible official of the school	As in paragraph (e) of this section or certified by responsible official of the school	As in paragraph (e) of this section or certified by responsible official of the school	As in paragraph (e) of this section or certified by responsible official of the school	As in paragraph (e) of this section or certified by responsible official of the school
(g) Professional (nonaccredited)	Law only[4]	12 class sessions per week	9 through 11 class sessions per week	6 through 8 class sessions per week	4 through 5 class sessions per week	1 through 3 class sessions per week
(h) Professional (accredited and equivalent)	Internships and residencies: Medical, dental and osteopathic	As established by accrediting association	---------- Full time only ----------			
	Nursing, X-ray, medical technology, medical records librarian, physical therapy[9]	22 clock hours or 14 semester hours, as appropriate	16 through 21 clock hours or 10 through 13 semester hours, as appropriate	11 through 15 clock hours or 7 through 9 semester hours, as appropriate	6 through 10 clock hours or 4 through 6 semester hours, as appropriate	1 through 5 clock hours or less than 4 semester hours, as appropriate
(i) Training establishment	Apprentice or other on-the-job[5]	Standard workweek	---------- Full time only ----------			

(j)	Agricultural	Farm cooperative[1]	10 clock hours net instruction[6]	7 clock hours net instruction	5 clock hours net instruction	No provision	
(k)	Elementary school-non-accredited	High school preparatory	25 clock hours net instruction	18 through 24 clock hours net instruction	12 through 17 clock hours net instruction	7 through 11 clock hours net instruction	1 through 6 clock hours net instruction
(l)	Elementary school-accredited	High school-preparatory[9]	22 clock hours net instruction	16 through 21 clock hours net instruction	11 through 15 clock hours net instruction	6 through 10 clock hours net instruction	1 through 5 clock hours net instruction

[1] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[2] Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing course at rate which would result in an accredited high school diploma at end of 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for chapter 34 and eligible spouses and surviving spouses under chapter 35.

[3] Cooperative courses may be pursued on full-time basis only.

Where the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are (1) charged full-time tuition, or (2) considered full time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement. The minimum for full time in either instance is 12 such hours. When 12 hours is properly certified as full time, 9 through 11 hours will be measured as 3/4 time, 6 through 8 hours will be measured as 1/2 time, 4 through 5 hours will be measured as less than 1/2 time and more than 1/4 time, and 1 through 3 hours will be measured as 1/4 time or less. All other undergraduate courses of less than full time will continue to be measured under paragraph (e) or (h) of this section as appropriate, but where 13 credit hours or the equivalent is certified as full time, 3/4 time will be 10 through 12 hours.

Upon request of a beneficiary, an increase in rates warranted under this criteria may be authorized to him or her effective March 26, 1970, if he or she was enrolled prior to that date and effective the date of enrollment if he or she was enrolled on or after March 26, 1970. The request of the beneficiary will not be required for other payments under this criteria.

To meet criteria for full-time measurement under 38 U.S.C. chapters 34 and 35 in standard collegiate courses which include required non-credit deficiency courses, in the absence of a certification under § 21.4272(f) the noncredit deficiency courses will be converted on the basis of the applicable measurement criteria, that is, 25 or 30 clock hours, 4 "Carnegie Units", or 12, 13 or 14 (as appropriate) semester hours equal full time. The credit-hour equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

[4] Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

[5] Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

[6] For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.

[7] Independent study programs will be measured as less than 1/2 time unless a major portion of the credit hours are by classroom/ laboratory attendance. (§21.4280)

[8] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter or semester-hour basis with full time measured on the same basis as provided by paragraph (e) of this section provided: (1) the academic portions of such courses must require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses must be measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, (3) the shop portions of such courses must be measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1-1/2 hours for 3/4 time courses of 16-21 clock hours; 1 hour for 1/2 time courses of 11-15 clock hours; or 1/2 hour for less than 1/2 time courses of 6-10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

[9] Supervised study must be excluded.

64. In § 21.4271, paragraph (c) is revised to read as follows:

§ 21.4271 Trade or technical; high schools

* * * * *

(c) *High schools.* Courses offered at the secondary school level which lead to a high school diploma or the equivalent will be measured on the basis of clock hours of instruction per week, or on the number of units required per year. Enrollment in courses at a secondary school level leading to a high school diploma or the equivalent will not be approved for eligible children under chapter 35. Eligible spouses and surviving spouses under chapter 35 may pursue such courses under the Special Assistance for the Educationally Disadvantaged program.

65. In § 21.4272, paragraphs (a), (b) and (f)(1) are revised to read as follows:

§ 21.4272 Collegiate undergraduate; credit-hour basis.

An undergraduate college level course in an institution of higher learning will be measured on a credit-hour basis provided all the conditions under paragraphs (a), (b), (c)(1) or (c)(2) of this section are met.

(a) *Degree courses; accredited or candidate.* The course is offered by a college or university and is accredited by a nationally recognized association for degree level programs or by one of the nationally recognized Regional Accrediting Associations or is offered by a college or university which is a "Candidate for Accreditation" by one of the nationally recognized Regional Accrediting Associations or one of the other nationally recognized accrediting associations.

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course leads to an associate, baccalaureate, or higher degree which is granted by the school offering the course.

(b) *Degree courses; nonaccredited.* The course is not accredited at a college degree level by a recognized accrediting association and is offered by a college or university which is not accredited or a recognized candidate for accreditation by one of the nationally recognized Regional Accrediting Associations or by one of the other nationally recognized accrediting associations.

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course leads to an associate, baccalaureate, or higher degree, which is granted by the school offering the degree under authority specifically conferred by a State education agency, and

(3) The school will furnish a letter from a State university or letters from three schools that are full members of a nationally recognized accrediting association certifying that credits have been accepted on transfer at full value without reservations, in partial fulfillment of the requirements for a baccalaureate or higher degree for at least three students within the last 5 years, and at least 40 percent of the subjects within each curriculum, desired to be measured on a credit-hour basis, shall have been so accepted by the certifying State university or each of the three accredited schools.

* * * * *

(f) *Noncredit courses.*—(1) *Measurement.* Except for courses leading to a high school diploma or the equivalent, noncredit courses given by an institution of higher learning shall be measured on a quarter- or semester-hour basis if considered by the institution to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the school. Other noncredit courses shall be measured under § 21.4270 (a), (b), (c), (d), (k), or (l) as appropriate. Where the school requires the veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet certain scholastic or entrance requirements, the school will certify the credit-hour equivalent of such noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The course will be measured on the total credit hour and the credit-hour equivalency.

* * * * *

66. In § 21.4277, paragraph (a) is revised to read as follows:

§ 21.4277 Discontinuance; unsatisfactory progress and conduct.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if:

(1) The veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending, or

(2) The veteran or eligible person is not progressing at a rate that will permit him or her to graduate within the approved length of the course based on the training time as certified to the Veterans Administration by the educational institution, notwithstanding the school's policy, unless mitigating circumstances are found. A veteran or eligible person enrolled on a credit-hour basis must be reported for unsatisfactory progress when he or she receives punitive grades that are unsatisfactory grades for graduation requirements, equivalent to more than the minimum number of credit hours considered by the school to be a full-time training load. For example, if the student considers 12 credit hours to be full time, when the student accumulates unsatisfactory grades for 13 credit hours or more, the school must report unsatisfactory progress. A veteran or eligible person enrolled in a course not measured in credit hours at a school operated on a term basis must be reported by the school for unsatisfactory progress, when the school first determines that the veteran or person must repeat the equivalent of more than one term at the full-time rate to graduate. In all other cases unsatisfactory progress must be reported by the school when the school or training establishment determines that an extension will be required beyond the approved length of the course or training program. See § 21.4253. Mitigating circumstances include, but are not limited to:

(i) Continuous pursuit of the program of training is precluded because of illness of the veteran or eligible person or because of illness or death in his or her immediate family.

(ii) Unavoidable conditions arise in connection with the veteran's or eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or a change in the hours or conditions of employment.

(iii) Immediate family or financial obligations beyond the control of the veteran or eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(iv) The course is being pursued by a student under subchapter V of chapter 34 or section 1733 of chapter 35, title 38, United States Code, who fails to satisfactorily complete a course without fault.

(v) The course is discontinued by the school.

(vi) The veteran is required to perform unanticipated active duty military service, including active duty for training.

* * * * *

67. In § 21.4279, paragraph (a)(4) is added and paragraph (b) is revised so that the added and revised material reads as follows:

§ 21.4279 Combination correspondence-residence program.

(a) A program of education may be pursued partly in residence and partly by correspondence for the attainment of a predetermined and identified objective under the following conditions:

* * * * *

(4) The school has certified to the Veterans Administration that all requirements of law have been met, including that portion of section 1780(a), title 38, United States Code, and § 21.4256 requiring the school to certify that the correspondence portion of a course leading to a vocational objective requires 6 months or more for completion. See § 21.4252(e). (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383.)

(b) The rate of educational assistance allowance payable shall be computed as set forth in §§ 21.4270 and 21.4136(a).

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each $292 of cost reimbursed.

(2) The charges for the residence portion of the program must be separate from those for the correspondence portion.

68. In § 21.4280, paragraphs (a)(1) and (2), (b) and (c) are revised to read as follows:

§ 21.4280 Independent study leading to a standard college degree.

(a) An eligible veteran or person may receive an educational assistance allowance for pursuit of an independent study course under the following conditions:

(1) The course is offered by a college or university;

(2) The course leads to or is fully creditable toward a standard college degree;

* * * * *

(b) The independent study program shall be measured as less than one-half time training as follows:

(1) If the college or university evaluates the course in semester or quarter hours of credit and prescribes a period for completion, the course shall be measured as less than one-half but more than one-quarter time when the semester hours per semester, or equivalent, are 4 or more and measured as one-quarter time or less for 1 through 3 semester hours per semester, or equivalent.

(2) If the college or university does not evaluate the independent study program in standard semester or quarter hours or the equivalent, the independent study program shall be measured as less than one-half but more than one-quarter time training.

(c) An eligible veteran or person who is pursuing an independent study program shall be paid an educational assistance allowance based on the training time determined in paragraph (b) of this section at the institutional rate prescribed in § 21.4136(a). If independent study subjects and subjects requiring class attendance are pursued concurrently and both are measured on a credit-hour basis, the allowable rate shall be determined on the basis of the combined training load provided a major portion of the hours are by class attendance. When a major portion of the course is not by class attendance, but the portion that is by class attendance would equal half-time or more, the number of independent study hours shall be converted to the highest number of hours consistent with less than half-time training as stated in § 21.4270. The converted independent study credit hours shall be added to the credit hours offered by class attendance. The allowable rate shall be determined on the basis of the combined training load. When a major portion of the course is not by class attendance, the portion that is by class attendance is equal to less than half-time or less, and the portion that is by independent study is equal to half-time or more, the number of independent study hours shall be converted to the highest number of hours consistent with less than half-time training as stated in § 21.4270. The training load shall be determined by adding the resulting hours together. The monthly rate shall be determined by computing the monthly rates separately for independent study and class attendance and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load. When a major portion of the course is not by class attendance and both the portion that is by class attendance and the independent study portion are each equal to less than half-time or less, the training load shall be determined by adding the hours attributable to each together. The monthly rate shall be determined by computing the monthly rates separately for independent study and class attendance and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load. When measurement is different (i.e., class attendance on a credit-hour basis and independent study under paragraph (b)(2) of this section), the appropriate rate for each part shall be determined and the combined rates paid, but not to exceed the full-time institutional allowance rate. (38 U.S.C. 1682(e) and 1732(c).)

69. In § 21.4503, paragraph (b) (2), (3) and (4) is revised to read as follows:

§ 21.4503 Determination of loan amount.

* * * * *

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

* * * * *

(2) The aggregate of the amounts any veteran or other eligible person may borrow for an education loan may not exceed the amount obtained by multiplying $292 times the number of months of educational assistance allowance to which the veteran or other eligible person is entitled under section 1661 or subchapter II of chapter 35, title 38, United States Code on the date that training commences during the period for which the loan is sought, but in no event more than $1,500 in any one academic year.

(3) No single loan shall be authorized at one time for a period longer than the academic year plus the summer term, quarter or semester consisting of a course or courses aggregating at least 8 weeks in length in the case of a student pursuing a standard college degree or for a period longer than 12 months in the case of a student pursuing a course which does not lead to a standard college degree.

(4) If the loan period is for more than one term, quarter, or semester in the case of students pursuing a course leading to a standard college degree, or for more than 6 months in the case of students pursuing a course not leading to a standard college degree, the following maximum amounts shall be paid on the loan at the beginning of such term:

(i) $1,500 for an academic year.

(ii) $2,000 for an academic year and following summer term.

(iii) $1,000 for a quarter and following summer term.

(iv) $1,250 for a semester and following summer term.

(v) $750 for any semester.

(vi) $500 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(vii) $1,000 for a course not leading to a standard college degree 6 through 8 months in length.

(viii) $1,500 for a course not leading to a standard college degree 9 through 11 months in length.

(ix) $2,000 for a course not leading to a standard college degree 12 months in length.

* * * * *

70. In § 21.4504, paragraph (b) is revised to read as follows:

§ 21.4504 Promissory note.

* * * * *

(b) *Interest.* The promissory note shall advise the student that the loan shall bear interest on the unpaid balance of the loan at a rate comparable to, but not in excess of, the rate of interest charged students at such time on loans insured by the Commissioner of Education, Department of Health, Education, and Welfare, under part B of title IV of the Higher Education Act of 1965. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount. (38 U.S.C. 1798; Pub. L. 94-502, 90 Stat. 2383.)

* * * * *

71. In § 21.4505, paragraph (b) is revised to read as follows:

§ 21.4505 Advertising.

* * * * *

(b) *Form.* The statement which is permitted shall be as follows: Certain eligible veterans and other eligible persons may qualify for a maximum educational loan of $1,500 per academic year from the Veterans Administration depending upon need. Applications for such loans shall be made to the Veterans Administration on forms prescribed by it.

[FR Doc. 78-22112 Filed 8-8-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 941-1; PP 5E1611/R125]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Oxytetracycline

AGENCY: Office of pesticide programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule corrects an error made in a previous rulemaking document. This amendment was requested by the California Department of Food and Agriculture. This rule establishes two permissible levels for residues of oxytetracycline in or on pears.

EFFECTIVE DATE: Effective on August 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Eugene Wilson, Product Manager (PM) 21, Registration Division (WH-567), Office of pesticide programs, EPA, 401 M Street SW., Washington, D.C. 202-426-2456.

SUPPLEMENTARY INFORMATION: On April 1, 1977, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (42 FR 17499) in response to a letter submitted to the Agency by the California Department of Food and Agriculture, 1220 North Street, Sacramento, Calif. 95814, concerning pesticide petition 5E1611.

The California Department of Food and Agriculture requested that 40 CFR 180.337 be amended by (1) changing the heading of the section from "Oxytetracycline hydrochloride" to "Oxytetracycline," (2) establishing a tolerance for residues of oxytetracycline calcium complex in or on the raw agricultural commodity pears at 0.1 part per million (ppm), and (3) specifying the methods and conditions of application of the pesticide in the regulation.

Subsequent to the proposal of this regulation there were discussions within the Agency as to whether oxytetracycline should be characterized as a fungicide or antimicrobial agent. Both terms are correct descriptors since the pesticide contains aspects of both, as defined in 40 CFR 162.3(ff)(2) and (8). Therefore, oxytetracycline is being described in this regulation as a pesticide without specific reference to either descriptor. No comments or requests for referral to an advisory committee were received from outside the Agency in response to this notice of proposed rulemaking. It is noted, however, that residues of oxytetracycline hydrochloride resulting from the infusion method of application would show up "in" the pears and not "on" them, and, therefore, the wording of the tolerance for residues of oxytetracycline hydrochloride at 0.35 ppm is changed to "in the raw agricultural commodity pears" instead of "in or on the raw agricultural commodity pears."

Furthermore, the Agency has determined that the proposed use will not result in the rapid development of oxy- tetracycline-resistant microorganisms by plasmid transfer. The proposed use against mycoplasma and bacterial disease at therapeutic levels of application should not foster rapid development on the part of target or nontarget organisms in light of current knowledge. Data in the microbiological literature does not indicate oxy- tetracycline resistance arises as rapidly as resistance to streptomycin is known to develop, for example. Since there is little likelihood that development of resistant microflora in applicator/user populations will develop as a consequence of use exposure to the pesticide, such theoretical potential should not preclude issuance of the proposed tolerance.

Similarly, in the human digestive tract at the highest theoretical levels, oxytetracycline is expected to have little chance of engendering immunity. The Food and Drug Administration has found that more than 2 ppm but less than 10 ppm is required to significantly increase the proportion of resistant coliform bacteria in the intestine of the dog. In comparison to the 2 ppm figure, the theoretical maximal residue concentration (TMRC) in the human diet resulting from this use is 0.0043 ppm. This is less than 1/500 the amount known to select for resistant microflora in the test animal. Considering the further dilution that takes place in the digestive juices and other factors, it is concluded that there is little risk of significant resistance build-up among microorganisms in the human digestive system.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.337 should be adopted as changed, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before September 8, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on August 9, 1978, 40 CFR Part 180 is amended as set forth below.

Dated: August 3, 1978.

(Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

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

Title 40 CFR 180.337 is amended and revised to read as follows:

§ 180.337 Oxytetracycline; tolerances for residues.

A tolerance of 0.35 part per million is established for residues of the pesticide oxytetracycline hydrochloride in the raw agricultural commodity pears

resulting from infusion of pear trees with an aqueous solution of the pesticide after harvest and prior to formation of new blooms.

A tolerance of 0.1 part per million is established for residues of the pesticide oxytetracycline calcium complex in or on the raw agricultural commodity pears from spray applications of the pesticide up to 60 days before harvest.

[FR Doc. 78-22149 Filed 8-8-78; 8:45 am]

[6820-24]

Title 41—Public Contracts and Property Management

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 193]

LATE BIDS AND PROPOSALS

Corrections

AGENCY: General Services Administration.

ACTION: Correction to final rule.

SUMMARY: In FR Doc. 78-20244 appearing on page 31331 in the FEDERAL REGISTER of Friday, July 21, 1978, the following change should be made:

1. In § 1-16.401, paragraph "(d)" is corrected to read paragraph "(f)" and the text of paragraph (f) is corrected to read "Instructions to Bidders (Construction Contract) (Standard Form 22, February 1978 edition). The Late Proposals, Modifications of Proposals, and Withdrawals of Proposals provision prescribed by § 1-3.802-1(a) or the Late Proposals, Modifications of Proposals, and Withdrawals of Proposals provision prescribed by § 1-3.802-2(b) (when authorized by the head of the agency) shall be substituted for the Late Bids, Modifications of Bids, or Withdrawal of Bids provision in Article 8 whenever the form is used in procurement by negotiation."

2. In § 1-16.901-22, the title of Standard Form 22 "Instruction to Bidders" is corrected to read "Instructions to Bidders."

DATE: The amendment is effective December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip G. Read, Director of Federal Procurement Regulations, 703-557-8947.

Dated: July 28, 1978.

PHILIP G. READ,
Director of Federal Procurement Regulations.

[FR Doc. 78-22126 Filed 8-8-78; 8:45 am]

[4110-35]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 19—LIMITATIONS ON PAYMENT OR REIMBURSEMENT FOR DRUGS

Abolition of Pharmaceutical Reimbursement Advisory Committee

AGENCY: Office of the Secretary, HEW.

ACTION: Final regulation.

SUMMARY: This rule amends 45 CFR Part 19 which specifies procedures by which the Department sets a maximum allowable cost (MAC) for drugs for which reimbursement is provided under medicare, medicaid, and other programs administered by the Department. It abolishes the Pharmaceutical Reimbursement Advisory Committee (PRAC) and substitutes routine, informal public hearings and the discretionary use of consultants. The purpose of this rule is to make the process for setting a MAC less burdensome and more responsive to rapid changes in the market prices of drugs and to eliminate potential conflicts of interest on the part of PRAC members.

DATE: Effective on August 9, 1978.

FOR FURTHER INFORMATION, CONTACT:

Peter Rodler, 202-472-3820.

SUPPLEMENTARY INFORMATION: The Department's regulation establishing maximum allowable cost limitations on payment or reimbursement for drugs was originally published on July 31, 1975. We published in the FEDERAL REGISTER on June 13, 1978 (43 FR 25450) a proposed rule which would abolish the PRAC and substitute routine, informal public hearings and the discretionary use of consultants. We invited interested persons to submit comments by July 13, 1978. We received five comments.

We received comments from two pharmaceutical manufacturers, a national independent pharmacists' association, a national wholesale association and a State department of social services. After considering all of the comments, we have decided to adopt the final rule without change. A summary of the comments and our responses follows.

Two commenters questioned whether the expertise of the PRAC members would be adequately replaced by the new procedures. PRAC members have been selected on the basis of their knowledge, experience and judgment in the areas of pharmacy, pharmacology, medicine, pharmaceutical marketing, public health and consumer affairs. Although the Pharmaceutical Reimbursement Board (the Board) will no longer receive technical input from the PRAC, the Board will obtain similar advice about these technical and complex matters from consultants selected on the basis of their knowledge, expertise and judgment in the same areas that the PRAC members represented. However, consultants will be chosen on a case by case basis, thus avoiding possible conflicts of interest. Additionally, the new mandatory hearing procedure affords all interested parties the opportunity to bring to the Board's attention any sensitive issues which the Board might otherwise overlook.

Two commenters suggested that the elimination of the PRAC would raise serious questions about the validity of the MAC regulations, citing *American Medical Association* v. *Mathews*, 429 F. Supp. 1179 (N.D. Ill. 1977). That case, which upheld the validity of the MAC regulations, viewed the PRAC as an important part of the MAC procedure as then constituted. However, neither that case nor any other has ever indicated that the use of an advisory committee is a necessary mechanism in arriving at an administrative decision. We have valued the PRAC's advice but we do not believe that the use of an advisory committee is the only means of arriving at a reasoned decision, based on a full examination of the issues. In fact, the court in *AMA* v. *Mathews, supra* confirmed this view, stating that, "the expert input from the Committee *and the potential of it from the public* enables the Board to make reasoned decisions." *AMA* v. *Mathews, supra*, at 1213 (emphasis added). In our view, the new MAC procedures fully comply with the rulemaking requirements of the Administrative Procedure Act.

One comment suggested that the conflict of interest problem was not of sufficient impact to abolish the PRAC, particularly since PRAC is an advisory group which has no power to bind the Department. However, the Federal conflict of interest statute applies not only to those who make decisions but also to those who render advice. (See 18 U.S.C. 208(a)). A related comment suggested that comments received from an individual or corporation at the public hearing might also be tainted by a conflict of interest. However, the conflict of interest statute applies only to Federal employees and thus would not apply to participants at the public hearings.

A further comment expressed the concern that the abolishment of PRAC would reduce the opportunity for the presentation of relevant data and limit the quantity and quality of

information available to the Board. The comment further suggested that the Government could control who is to be heard and what is to be said. However, we note that there is no limitation whatever on the submission of written comments which must be considered by the Board. Additionally, although the Board will retain the right to allot time limits for each oral presentation, it must hear every person who wishes to make an oral presentation relevant to the proposed MAC. Under the new regulation, the Board no longer has the discretion to determine whether or not to hold a hearing or to decide who will be allowed to speak about a particular MAC. The Board, however, has the right to deny a request if, in its opinion, the proposed presentation is not relevant to a MAC under consideration. This is the only reason for not granting a request. We, therefore, do not believe that the abolition of the PRAC will reduce the flow of information to the Board.

One commenter stated that the abolishment of the PRAC would not significantly shorten the MAC setting process. The commenter concurs with the Department's desire to make the process more responsive to changes in the marketplace but believes that the time saved does not outweigh the loss of competent advice. On the other hand, we believe that the MAC process will be significantly shortened and, as discussed above, there will be no lessening of competent advice to the Board.

Another commenter concurred with our intent to abolish the PRAC and fully supported the use of consultants and the public hearing process. A related comment supported the abolition of the Committee and suggested further that the Board also be abolished and the MAC program be eliminated entirely. We do not consider the substance of this comment to be within the scope of the proposed rule.

Additional comments questioned whether consultant reports would be made public. These reports will be made part of the administrative record and will be available for inspection before the public hearing.

45 CFR Part 19 is amended as follows:

1. Section 19.4 is revised to read as follows:

§ 19.4 Establishment of pharmaceutical reimbursement board.

(a) There is established in the Health Care Financing Administration a Pharmaceutical Reimbursement Board consisting of six full time employees of the Department, representing the principal offices and agencies concerned with developing and implementing cost determinations under this part. The Director, Office of Pharmaceutical Reimbursement, shall serve as the Chairman.

(b) The Board may make use of outside consultants to advise it on any technical or complex issues during its consideration of a proposed MAC.

2. Section 19.5 is revised to read as follows:

§ 19.5 Determination of maximum allowable cost.

(a) Identification of drugs to which a MAC may be applied. The Board shall identify those multiple source drugs for which significant amounts of Federal funds are or may be expended under the programs and for the activities described in § 19.1 and for which there are or may be significantly different prices.

(b) Review by the Food and Drug Administration. The Board shall notify the Food and Drug Adminstration in writing of each drug identified in accordance with paragraph (a) of this section. The Food and Drug Administration, in response to each such notification, shall advise the Board in writing whether there is any regulatory action, either pending or under consideration, bearing upon the marketability of, or to establish a bioequivalence requirement for, the drug and shall further advise the Board whether, in the judgment of the Food and Drug Administration, any such action is a reason for delaying or withholding the establishment of a MAC for the drug.

(c) Initial determination of lowest unit price. For each drug identified in accordance with paragraph (a) of this section and for which the Food and Drug Administration has not advised delaying or witholding the establishment of a MAC, the Board shall make an initial determination of the lowest unit price at which the drug is widely and consistently available from any formulator or labeler. This determination will be based on the package size of drug most frequently purchased by providers. If it appears to the Board that a drug is or will be unavailable to providers in one or more localities at the same lowest unit price at which it is available elsewhere, the Board shall make a separate determination for each such locality.

(d) Proposed MAC. The Board shall determine whether the lowest unit price should be proposed as the maximum allowable cost (MAC) for the drug.

(e) Notice and comment. The Board shall publish as a notice in the FEDERAL REGISTER each proposed MAC and a summary of the Board's reasons for its proposal. The notice shall invite interested persons and organizations to submit in writing comments on the proposed MAC. All comments received will be maintained for public inspection at the office of the Board.

(f) Public hearing. A public hearing will be held with respect to each proposed MAC. The hearing will be held no sooner than 45 days from the date of the notice in the FEDERAL REGISTER. The dates, time, and location of the hearing shall appear in the notice.

(g) Conduct of hearing. The hearing shall be open to the public and a transcript shall be made of the proceedings. Persons or organizations wishing to make presentations shall submit to the Board's Executive Secretary, no later than 15 days prior to the hearing, a minimum of 20 copies of the proposed oral presentation in its entirety, together with all supporting studies or materials and the names and addresses of proposed participants. The Board will allot time for each oral presentation which, in the judgment of the Board, is relevant to the proposed MAC. Those requesting to appear at the hearing in accordance with this paragraph will be notified in writing.

(h) Proposed final determination. After considering the written comments, the presentations made at the public hearing and any other evidence included as a part of the record, the Board shall decide whether a MAC should be established for each drug for which a notice of proposed MAC was published and, if so, shall make a proposed final determination of a MAC for each drug.

(i) Administrator's concurrence. The Board shall submit each proposed final determination to the Adminstrator of HCFA. The Administrator shall concur or nonconcur, but may not modify the Board's proposed final determination. If the Administrator concurs, the proposed determination becomes final. If the Adminstrator nonconcurs, the Board may reinstitute proceedings under this section to adopt a MAC for that drug at a different level.

(j) Publication. Notice of the final determiantion shall be published in the FEDERAL REGISTER together with a statement of the Board's reasons for its determination.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: August 2, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-22296 Filed 8-8-78; 8:45 am]

[6315-01]

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

[CSA Instruction 6005-2]

PART 1061—CHARACTER AND SCOPE OF SPECIFIC PROGRAMS

Subpart—Citizen Participation Grant Program—Fiscal Year 1978

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is filing a final rule describing its fiscal year 1978 citizen participation grant program. This program is being undertaken as part of an effort both to reinforce CSA's commitment to involvement of the poor and to assist in the continuing improvement of the process of involving the poor. This rule discusses the purposes and conditions of the program, categories of projects eligible for funding, criteria for review of proposals, financial policies and application procedures.

EFFECTIVE DATE: August 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Faye Rattner, telephone 202-254-5280.

SUPPLEMENTARY INFORMATION: On June 16, 1978 (43 FR 26079), CSA published a proposed rule outlining its fiscal year 1978 citizen participation grant program. Seven letters were received in response to our request for comments on the proposed program, three of which urged extension of the initial schedule. However, CSA already had filed an amendment to that rule on July 5, 1978 extending the timetable for application submission. One grantee, while expressing strong support for the program, questioned the inclusion in the proposed rule of the statement that "* * * preference will be given to applications whose projects are aimed at producing a specific outcome (e.g. passage of a local ordinance benefitting the poor) or a specific product." The grantee's point was that "Product oriented proposals limit and restrict the possible alternatives available, force the agency and the representatives of the poor who participated in the proposal plan to 'sell' others that their preselected alternatives are best." We do not agree with this assumption but rather we feel that any well-developed plan must be focused on something concrete that those involved in its development want to accomplish. The time to discuss alternatives, activities, and so forth is in the development stages of the proposal.

The chairperson of a neighborhood legal services program recommended that funds be granted directly to qualified and eligible community groups other than CAA's. Since the intent of the program is the strengthen the CAA's ability to impact on the quality of the involvement of the poor in community activities, acceptance of this recommendation would undermine the purpose of the program. Therefore, no change is being made.

The Ramsey Action Program, Inc. expressed concern that § 1061.60-7(b) limited evaluations of citizen participation processes to federally funded programs noting that there are other local programs and activities which greatly impact on low-income people. We agree that evaluating citizen participation processes of local non-federally funded programs and organizations is a valid and valuable activity and the final rule has been changed to so reflect.

We thank those persons who responded for their time and efforts in so doing. CSA wants to assure CAA's that through this program and other activities of a similar level it intends to be a leader in supporting and increasing citizen participation efforts at all levels.

GRACIELA (GRACE) OLIVAREZ,
Director.

45 CFR part 1061 is amended by adding the following:

Subpart—Citizen Participation Grant Program—Fiscal Year 1978

Sec.

1061.60-1 Applicability.
1061.60-2 Background.
1061.60-3 Policy.
1061.60-4 Eligible applicants.
1061.60-5 Conditions of the program.
1061.60-6 Funding policies.
1061.60-7 Activities eligible for funding.
1061.60-8 Application requirements.
1061.60-9 Review and approval of applications.
1061.60-10 Timetable.
1061.60-11 Reporting requirements.

AUTHORITY.—Sec. 602, 78 Stat. 530, (42 U.S.C. 2942).

Subpart—Citizen Participation Grant Program—Fiscal Year 1978

§ 1061.60-1 Applicability.

This subpart is applicable to community action agencies funded under title II, section 221 of the Economic Opportunity Act of 1964 as amended, if the assistance is administered by the Community Services Administration.

§ 1061.60-2 Background.

(a) The Economic Opportunity Act of 1964, as amended, states as a purpose of title II "* * * the development and implementation of all programs and projects designed to serve the poor or low-income areas with the maximum feasible participation of residents of the areas and members of the groups served * * *"

(b) To this end CSA requires that there be extensive and intensive participation of the poor and residents in the planning, conduct, and evaluation of programs which affect their lives. Within community action program projects funded by CSA, this is a continuing and ongoing process and is carried out in many ways, e.g. membership on the governing and project advisory boards, employment in the project, participation in the development of all parts of the grant application, etc.

(c) However, the EOA requirement should not be interpreted as a mandate restricted to activities carried out by CAA's only under projects funded by CSA. Rather it should be regarded as a mandate to the CAA that it assure that the poor have an opportunity to participate in and impact on community-wide decisions that affect their lives. In this area, CSA strongly supports efforts to encourage other agencies, organizations and groups at the national, State and local levels to adopt policies requiring participation of the poor in programs which affect them.

§ 1061.60-3 Policy.

(a) Clearly, the quality of participation and continuing improvement of the process of involving the poor are the common goals of CSA and its grantees.[1]

(b) Therefore, in an effort both to reinforce its commitment to involvement of the poor and to assist in the continuing improvement of the process of involving the poor, CSA is undertaking a specific citizen participation grant program designed to fund approaches, activities, and techniques that will strengthen the CAA's ability to impact on the quality of the involvement of the poor in community activities.

§ 1061.60-4 Eligible applicants.

Only community action agencies (CAA's) may apply for funds under this program.

§ 1061.60-5 Conditions of the Program.

The activities to be considered for funding must be in addition to, not a substitute for, the minimum requirements for involvement of the poor contained in OEO Instruction 6005-1, Participation of the Poor in the Planning, Conduct and Evaluation of Community Action Programs. Therefore:

(a) Proposals to use CSA funds only to supplement existing activities previ-

[1] OEO Instruction 6005-1, participation of the poor in the planning, conduct and evaluation of community action programs.

ously approved in a current grant will not be eligible for funding;

(b) Proposals to use CSA funds for operating costs of service programs will not be eligible for funding; and

(c) Preference will be given to applications whose projects are aimed at producing a specific outcome (e.g. passage of a local ordinance benefitting the poor) or a specific product.

§ 1061.60–6 Funding Policies.

(a) $1,500,000 are available for the funding of 60 citizen participation grants.

(b) Each regional office will receive a base allocation based on the percentage of local initiative funds it is awarded annually.

(c) Grants will be made on a one-time basis in fiscal year 1978 for a period not to exceed 12 months.

(d) No grant will be funded in an amount that exceeds $25,000.

(e) Non-Federal share is not required for this program. Since the nature of this program is process oriented and is not designed to deliver services, the Director of CSA has determined that the non-Federal share requirement is waived for this program.

§ 1061.60–7 Activities eligible for funding.

(a) Developing and implementing innovative techniques for involving the poor in the Administrative process of local government. Such techniques should, in most cases, be in addition to the four usual mechanisms: Advisory boards, planning boards with defined authority, use of published materials to secure public comment and public meetings and hearings.

(b) Planning, organizing and conducting evaluations of the citizen participation process in federally funded programs, locally-operated programs, or of organizations, commissions, etc. whose activities and/or decisions impact the lives of the poor. Such projects shall involve the poor in both project development and in the actual conduct of any evaluation.

(c) Providing administrative support, e.g. community organizers, for building coalitions between the poor and other groups that focus on specific anti-poverty issues within the community and result in an ongoing involvement of the poor.

(d) Developing and implementing innovative techniques for involving the poor in the formal processes of other public and private agencies, organizations, and institutions within the community.

(e) Developing and conducting or providing administrative support for leadership development programs to enhance the planning, analyzing, negotiating and evaluation skills of low-income community representatives; and to increase the understanding of low-income individuals of the processes of government at all levels particularly those directly impacting their daily lives and to provide them with better skills to deal with these governmental processes. Such projects shall be in addition to board training projects for the low-income sector of a community action board.

(f) Developing and implementing techniques for strengthening a community-wide planning process that formally involves the poor and other individuals and groups in needs analysis and action plans which result in a redirection of priorities and resources to anti-poverty concerns that focus on specific anti-poverty issues within the community.

§ 1061.60–8 Application requirements.

(a) Where to apply: Applications should be submitted to the appropriate regional office of CSA.

(b) Required forms.

(1) OEO form 419 Summary of work program and budget. (See OEO instruction 6710–1.) NOTE: Goals and activities must be consistent with the specific standards of effectiveness for local initiative and the general standards for title II programs outlined in CSA instruction 7850–1a and the form 419 must reflect these standards.

(2) OEO Form 25 Program account budget. (See OEO instruction 6710–1.)

(3) OEO Form 25a Program account budget support sheet. (See OEO instruction 6710–1.)

(4) SF–424. (Complete sections I and II.) Federal assistance. (See § 1067.10 or CSA instruction 6710–3a.)

(c) Narrative supplement. Only required for those grantees whose recent planning process does not contain the items listed below.

(1) Description of the present mechanisms for involving the poor in the area of the proposed project.

(2) Assessment of the strengths and weaknesses of the present community mechanisms that deal with the problem to be addressed by this project.

(3) Past efforts, if any, in this proposed project area.

(d) Clearinghouse review (A–95). Applicants are reminded that applications for citizen participation grant funds must be submitted to appropriate clearinghouses in accordance with the provisions of OMB circular A–95. (See § 1067.10 or CSA instruction 6710–3a.) Applicants are encouraged to submit their notifications of intent to apply as soon as such a determination is made. Although applications may be reviewed and ranked by regional offices, no decisions regarding award will be made until prospective grantees submit the results of clearinghouse reviews to the appropriate regional office.

§ 1061.60–9 Review and approval of applications.

(a) Conduct of Review. Review and recommendations for final approval will be conducted in each of the 10 regional offices of CSA. Review of grants competing for funds within each region will be based exclusively on the criteria outlined in paragraph (b) of this section.

(b) Criteria for Reviewing Proposals. Grant applications within each CSA Regional Office will be reviewed and assessed against the following criteria:

	Maximum points allowable
(1) Completeness and feasibility of the proposed project design with carefully formulated measurable objectives and logical methods for meeting these objectives	15
(2) Plans for continuance of activities, mechanisms, processes, or procedures generated by the proposed project, if any, beyond the termination of financial support under the citizen participation program	25
(3) Commitment from collaborating agencies and organizations where they could be expected to contribute to the value or success of the project	20
OR	
Project aimed at producing specific outcome or product and has good potential for success	20
(4) Extent to which the proposed project implements CSA general standard of effectiveness III, maximum feasible participation of the poor. (See § 1067.4 or CSA Instruction 7850–1a, Standards for Evaluating the Effectiveness of CSA-Administered Programs and Projects.)	15
(5) Extent to which the project will affect community willingness and ability to continue involvement of the poor	25
Total	100

§ 1061.60–10 Timetable.

August 15—Receipt of formal funding requests from eligible applicants by appropriate regional office.

September 1—Conduct of review process within regional offices.

Week of September 4—Signing of CSA form 314 by Assistant Director for Community Action.

§ 1061.60–11 Reporting requirements.

Grantees will follow the financial and project reporting requirements outlined in section 1050 or CSA Instructions 6800–8, Financial Reporting Requirements and 6800–9, Monitoring and Reporting Program Performance.

[FR Doc. 78–22220 Filed 8–8–78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20870; FCC 78-559]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Regulatory Policies and Procedures in the Domestic Public Land Mobile Radio Service (DPLMRS)

AMENDMENT OF THE RULES

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The present § 21.13(f) of the rules is amended to eliminate the present requirement that an applicant in the Domestic Public Land Mobile Radio Service (DPLMRS) submit with his application a copy of his State certificate or franchise if one is required by the State in which the applicant intends to operate. Instead licenses will expire 240 days from the date of the grant if State certification is not obtained by that time. The amendment is expected to improve application processing in the DPLMRS, and is expected to eliminate the exclusionary effect on new carriers of the present rule.

EFFECTIVE DATE: September 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Patrick J. Donovan, Mobile Services Division, Common Carrier Bureau, 202-632-6450.

SUPPLEMENTARY INFORMATION:

FIRST REPORT AND ORDER

Adopted: July 27, 1978.

Released: August 9, 1978.

In re regulatory policies and procedures in the Domestic Public Land Mobile Radio Service, docket No. 20870, (41 FR 38192).

1. This proceeding was initiated by issuance of a notice of inquiry and notice of proposed rulemaking, 61 FCC 2d 266 (1976) wherein we proposed to revise certain licensing policies and procedures in the Domestic Public Land Mobile Radio Service (DPLMRS). Among these was a proposed modification of § 21.13(f) of the rules[1] which presently requires that an applicant submit with his application a State certificate or franchise if one is required by the State in which the applicant intends to operate. We proposed to amend the rules to eliminate this requirement and instead first authorize construction and, if appropriate, condition licensing upon receiving a State certificate or franchise where required by applicable local law. Other changes were proposed with respect to open frequencies and uniform need standards. These latter proposals remain under consideration and will be the subject of a subsequent report and order. Accordingly, we will deal herein only with the proposal concerning § 21.13(f) of the rules.

2. Comments on the State certification proposal were made by the following: National Association of Radio Telephone Systems (NARS);[2] Illinois Association of Radiotelephone Systems, Inc.; Public Utility Commission of Texas; Nebraska Public Service Commission; New Mexico Radio Common Carrier Association; Allied Telephone Companies Association; Tennessee Association of Radiotelephone Utilities; The American Telephone & Telegraph Company (A.T. & T.); National Association of Regulatory Utility Commissioners (NARUC); Radio Common Carriers of New York, Inc.; ATS Mobile Telephone, Inc.; GTE Service Corporation (GTE); Radio Relay New York Corp., and its affiliates; United States Independent Telephone Association; The Tennessee Public Service Commission; and the Florida Radio Telephone Association, Inc.

3. The arguments raised by the parties involve three areas: application processing, open entry and Federal preemption. These areas, plus miscellaneous arguments, will be discussed in turn.

APPLICATION PROCESSING

4. In the notice we stated that licensing procedures in the DPLMRS would be improved by eliminating the prior State certification requirement. NARS argues, however, that the proposed change is unnecessary. To support this view, NARS has conducted a study of DPLMRS application processing covering the period from July 1, 1973 to June 30, 1976. The results show a reduction in processing time during this period. More particularly, at the beginning of the study period 25 percent of all applications and 10 percent of applications for construction permits were processed in 26 weeks or less. But by the end of the study period approximately 84 percent of all applications and the same proportion of applications for construction permits were processed in 26 weeks or less. From this improvement NARS argues that DPLMRS application processing time is nearing an irreducible minimum.

5. NARS further argues that the proposed amendment would itself create processing delays. It anticipates that elimination of the State certification requirement would result in a greater number of applications to the FCC which, in addition to the processing time required for these, would inevitably result in a greater number of electrically mutually exclusive applications. These electrically mutually exclusive applications would then under *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1946), have to be evaluated in the context of a costly and time-consuming comparative hearing. NARS also argues that if construction permits are issued without the applicant having obtained State certification, administrative fairness would require granting extensions of construction permits to accommodate applicants' attempts to obtain State certification. Insofar as State authority will not be infringed upon, the United States Independent Telephone Association supports the proposed change because it will permit simultaneous processing at the State and Federal levels.

6. The State certification requirement is presently (and has been for some time) the subject of many petitions to deny which, given the multiplicity and variety of State requirements, creates significant processing delays because of the time and staff required to resolve the issue with respect to each application. Although DPLMRS applications are frequently the subject of petitions to deny based on need, character qualifications, financial qualifications, and anticompetitive allegations which cause delay, many applications ultimately could be disposed of and the application granted but for the State certification question. Therefore, a more efficient and economical use of Commission resources will be to process and grant applications for construction permits and licenses and make State certification a condition subsequent; the grants will expire if State certification is not obtained.

7. This approach will serve the public interest by permitting simultaneous application processing at the State and Federal levels. This will reduce the time associated with processing applications, and will ultimately benefit the public. At the same time, this procedure will preserve Federal-State jurisdictional boundaries by

[1] Section 21.13(f) of the rules (47 CFR 21.13(f)(1976)) provides:

Where required by applicable local law, an applicant shall include a copy of the franchise or other authorization issued by appropriate regulatory authorities. If no such local requirement exists, or if Commission authority is a prerequisite for such authorization, a statement to this effect shall be included in the application.

[2] Now the Telocator Network of America.

allowing us to find an applicant qualified under Federal standards subject to meeting whatever requirements are additionally imposed by the States.

8. With respect to NARS' study of application processing, we agree that DPLMRS processing time has been greatly reduced. However, we cannot agree that processing time is nearing an irreducible minimum. We believe that a 26-week (or 6-month) processing time can be reduced still further. Moreover, as NARS' latest figures indicate, many applications still require substantially more than 26 weeks to process. We believe that, whenever grant of an application is in the public interest, it should be accomplished with the least delay consistent with due process and the orderly administration of business. For these reasons we believe it will be appropriate to adopt such measures as may reasonably be expected to further accelerate DPLMRS processing.

9. We are not persuaded by NARS' arguments that the amendment itself will cause delays and complicate processing. In our experience the great majority of electrically mutually exclusive applications in the DPLMRS are settled by agreement between the parties prior to hearing. The cost and time involved in such hearings are major inducements to settlement. With respect to the possibility that applicants will request extensions of construction permits while they are pursuing State certification, our staff is familiar with such requests and we do not envision that they will create any significant problem.[3]

OPEN ENTRY

10. Under the current § 21.13(f) of the rules before an applicant may apply to this Commission for authorization in the DPLMRS, he must first apply to State authorities for a certificate of public convenience and necessity, if one is required by the State in which the applicant intends to operate. At the State level, the applicant may be protested by existing carriers. These protests at the State level meet with varying degrees of success and take varying amounts of time to resolve. While they are proceeding to termination, however, existing carriers already having State certification[4] frequently apply to this Commission for allocation of available frequencies. Because of our 60-day cut-off rule,[5] existing carriers can hold up State certification of new carriers for 60 days and thereby effectively preclude new carriers from applying to this Commission if spectrum is scarce in the region in which the new carrier intended to operate.

11. This is an undesirable situation. First, in many instances we have only one applicant applying for a given frequency, thereby depriving us of the advantages of comparison between the offerings of two or more carriers. Second, in evaluating applications we are precluded in many instances from considering any beneficial effect competition may have on the public interest.

12. In discussing this point, we are mindful that we are prohibited from authorizing new carriers to enter a market solely to promote competition. *Hawaiian Telephone Co.* v. *FCC*, 498 F.2d 771 (D.C. Cir. 1974). Rather, our mandate is to find the broad public interest. Id. However, "[t]here can be no doubt that competition is a relevant factor in weighing the public interest." *FCC* v. *RCA Communications, Inc.*, 346 U.S. 86, 94 (1953); *Commonwealth Telephone Co.*, 61 FCC 2d 246 (1976). Accordingly, in basing our decision herein in part on the fact that it will permit new carriers to gain access more easily to this Commission, we do so not to promote competition in the DPLMRS per se, but only to eliminate the potential exclusionary effect of § 21.13(f) of the rules, which prevents us in many instances from ever weighing the benefits of competition.

13. NARS argues, however, that radio common carriers have substantially exhausted the spectrum allocated to them and that the limited amount of spectrum still available is wholly inadequate to provide for the reasonable short-term growth needs of existing carriers. They argue that the spectrum limited condition is a sufficient basis for careful regulation of the industry, particularly with respect to who shall be licensed to use the remaining available spectrum. They conclude that as long as there is insufficient spectrum to satisfy existing demand, some form of limitation on entry is impossible to avoid. In substance, NARS argues that our current State certification rule properly acts as a barrier to open entry.

14. As we have stated, competition is a relevant factor in weighing the public interest, *FCC* v. *RCA Communication, Inc., supra*, and we will not, therefore, preclude ourselves from ever considering whether the public interest might be served by introducing a new carrier into a particular market. We note here that we have previously declined to adopt a protectionist policy in the DPLMRS. *Travel-Phone Corp.*, 50 FCC 2d 1142 (1975), recon. granted on other grounds, 53 FCC 2d 1234 (1975); *In Re Establishment of Policy Effecting 60kc Adjacent Channel Frequency Assignments for Miscellaneous Common Carriers Licensed in the Domestic Public Land Mobile Radio Service*, docket 9648, 1 RR 91:455 (P & F 1950); *In Re Amendment of Parts 21, 89, 91 and 93 of the Rules to Reflect the Availability of Land Mobile Channels in the 10 Largest Urbanized Areas of the United States*, docket 18261, 30 FCC 2d 221, reconsideration granted in part 32 FCC 2d 572 (1971); *Land Mobile/UHF-TV Sharing Plan*, dockets 18261 and 21039, 63 FCC 2d 126 (1977).

PREEMPTION

15. Thirdly, NARUC and NARS argue that by proposing to authorize construction without regard to State certification the Commission intends to coerce State regulatory agencies to certify every applicant to whom the commission grants a construction permit. They argue that the proposal is an attempt to preempt State regulation contrary to sections 2(b) and 221(b) of the Communications Act of 1934, as amended (the Act),[6] 47 U.S.C. 152(b), 221(b).

[3] Consistent with our current policy, such requests will be individually evaluated and, depending on the showing made, will be granted or the construction permit will be allowed to expire. Although, as NARS suggests, extensions of construction permits can tie up frequencies, this is merely a factor in deciding whether a further extension of time should be granted. We will treat this consideration on an individual basis; in certain cases the appropriate remedy will be forfeiture of the construction permit. In any case, we regard the questions of extensions as speculative and outweighed by the other benefits which we foresee from our action herein.

[4] We are aware that in some States existing carriers must obtain State certification prior to expanding service into new areas.

[5] Section 21.31(b) of the rules (47 CFR 21.31(b) (1976)) provides:

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cutoff" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

[6] Section 2(b) of the Act provides:

Subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in

Footnotes continued on next page

16. Assuming that we intended to preempt State regulation, the Allied Telephone Companies Association and others oppose the change on the ground that the initial decision is better made at the local level. Local authorities, they say, are in a better position to evaluate the particular applicant, demographic data, growth rates and the like.

17. We emphasize that our action herein will not preempt State regulation. Although we will grant applications for construction permits and for licenses without State certification, we are merely changing the former sequential nature of State and Federal approval of applications. As before, both Federal approval and State approval, if required by applicable local law, will be necessary before an applicant can provide his proposed service, although now he can pursue all necessary authorizations simultaneously. In this connection, we anticipate that State regulatory authorities may deny certificates of public convenience and necessity to some prospective carriers who have already obtained construction permits and licenses. Since our rule amendment will not preempt State regulations, we need not reach the question whether preemption would contravene sections 2(b) and 221(b) of the Act.

18. One other point is in order here. We fully recognize the validity of a policy which prohibits construction of facilities prior to authorization. Section 319 of the Act contemplates that sequence of events.[7] *See WJIV-TV, Inc. v. FCC*, 231 F. 2d 725 (D.C. Cir. 1956). We have no quarrel at this time, therefore, with State laws such as that which has been brought to our attention by the Tennessee Public Service Commission, which prohibit construction prior to obtaining a certificate of public convenience and necessity. For this reason, we are concerned that when we issue an authorization to construct it may appear that we have intended to override Tennessee law and other similar State laws currently in force or which the States may wish to enact prohibiting construction prior to authorization. To preclude any ambiguity on this matter, we will require applicants issued construction permits to fully comply with State laws in this respect. In other words, in this type of situation, the applicant would be prohibited from both construction and operation pending State approval.

MISCELLANEOUS ARGUMENTS

19. NARS argues that the Commission may not make the statutorily mandated ultimate finding of "public interest, convenience and necessity"[8] or the rule-mandated subsidiary finding that "the applicant is legally, technically, financially and otherwise qualified"[9] until such time as the question of State authority has been resolved. We find this argument unpersuasive. Although the Commission must find a particular applicant "legally qualified," it may within the confines of the Act change what shall constitute legal qualifications. Furthermore, our action retains State certification (as a condition subsequent on authorizations) and does not, therefore, constitute a change in legal qualifications. By conditioning grants on obtaining State approval, we can assure that all legal qualifications must be met. Concerning the legal qualifications of applicants in other part 21 services, our amendment of § 21.13(f) will not change the State certification requirement as presently applied to these services.

20. GTE argues that State certification must be considered at the construction permit stage because the statutory scheme embodied in sections 309 and 319 of the Act requires that the substantive consideration of applicants be given at the construction permit stage. We disagree. Whatever validity GTE's interpretation of these provisions may have, we have not so changed our procedure so that the substantive consideration of applicants will not be given. As before, applicants for construction permits and licenses will be required to demonstrate fully their qualifications. With respect to State certification, we may reasonably make that requirement a condition appearing on authorizations under the discretion given to this Commission in section 319 in prescribing precisely what qualifications shall be required.[10]

21. NARS has filed a timely "petition for reconsideration" directed against our statement in the notice that we would entertain interim requests for waiver of § 21.13(f) of the rules. For various reasons NARS argued that interim waivers would be unlawful. In view of our decision herein, this matter never having been disposed of, the "petition for reconsideration" is dismissed as moot.

22. For these reasons, we will amend § 21.13(f) of the rules as set forth below to become effective September 15, 1978.

(Secs. 4, 303, 403 48 Stat., as amended, 1066, 1082, 1094 (47 U.S.C. 154, 303, 403).)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Section 21.13(f) is amended to read as follows:

§ 21.13 General application requirements.

* * * * *

(f) (1) Where required by applicable local law, an applicant shall include a copy of the franchise or other authorization issued by appropriate regulatory authorities. If no such local requirement exists, or if Commission au-

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Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier, to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

Section 221(b) of the Act provides:

Subject to the provisions of section 301, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

[7] Section 319 of the Act provides in part:

No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission.

[8] Section 309 of the Act provides in part:

Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

[9] Section 21.32(b) of the rules provides that a grant shall be without formal hearing if, inter alia, the applicant is legally, technically financially and otherwise qualified, and a grant of the application would serve the public interest.

[10] Section 319(a) of the Act provides in part: The application for construction permit shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical and other ability of the applicant to construct and operate the station * * * and such other information as the Commission may require.

thority is a prerequisite for such authorization, a statement to this effect shall be included in the application. This subparagraph (1) is not applicable to the Domestic Public Land Mobile Radio Service.

(2) In the Domestic Public Land Mobile Radio Service applicants are not required to file State certificates. Permittees and Licensees are required to abide by all State requirements of certification whether as to construction or operation. In the case of a construction permit grant, the permittee must complete construction in accordance with § 21.43 of the rules. In the case of a license grant, the licensee must have all requisite State authority, and be in operation within 240 days of the date of the license grant, or the license will automatically expire and must be submitted for cancellation.

* * * * *

[FR Doc. 78-22182 Filed 8-8-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1333]

PART 1033—CAR SERVICE

Illinois Terminal Railroad Co. Authorized To Operate Over Tracks of Illinois Central Gulf Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (service order No. 1333).

SUMMARY: The Illinois Terminal Railroad Co. is unable to operate over its line between Lincoln and Allentown, Ill., because of damage to a bridge at Mackinaw, Ill. Service Order No. 1333 authorizes the Illinois Terminal to operate over parallel trackage of the Illinois Central Gulf Railroad Co. between Lincoln and Pekin, Ill. in order to provide continued rail service for shipments routed via its line.

DATES: Effective 12:01 a.m., August 5, 1978. Expires 11:59 p.m., November 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided August 4, 1978.

The line of the Illinois Terminal Railroad Co. (ITC) between Lincoln and Allentown, Ill., is inoperative because a bridge is out of service at Mackinaw, Ill. An alternate route is available by the use of the tracks owned by the Illinois Central Gulf Railroad Co. (ICG) between Lincoln and Pekin, Ill. The ICG has consented to use of these tracks by the ITC.

It is the opinion of the Commission that an emergency exists requiring operation of ITC trains over these tracks of the ICG in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered.

§ 1033.1333 Car Service Order No. 1333.

(a) Illinois Terminal Railroad Co. authorized to operate over tracks of Illinois Central Gulf Railroad Co. The Illinois Terminal Railroad Co. (ITC) is authorized to operate over tracks of the Illinois Central Gulf Railroad Co. (ICG) between Lincoln and Pekin, Ill.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the ITC over tracks of the ICG is deemed to be due to carrier's disability, the rates applicable to traffic moved by the ITC over the tracks of the ICG shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 12:01 a.m., August 5, 1978.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17))

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-22256 Filed 8-8-78; 8:45 am]

[7035-01]

[S.O. No. 1332; Corrected Second Rev. S.O. No. 1309]

PART 1033—CAR SERVICE

Railroad Operating Regulations for Freight Car Movement

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1332).

SUMMARY: There are severe shortages of freight cars throughout the country. Service Order No. 1332 requires all railroads to place, remove, forward, weigh, clean or repair cars within 60 hours in order to expedite the handling of freight cars and to increase their availability for reloading.

DATES: Effective 12:01 a.m., August 8, 1978. Expires 11:59 p.m., August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided August 4, 1978.

By petition filed July 7, 1978, Southern Pacific Transportation Co. (SP) appealed the Railroad Service Board's decision denying the petition for exemption from, or rescission of, Corrected Second Revised Service Order No. 1309. SP states that the service order will impose a hardship on the Nation's railroads, and that it will reduce, rather than increase, the supply of freight cars.

We believe that SP raised some important questions relating not only to SP's situation, but also to the impact of the service order on shippers and carriers generally. We took the extraordinary step of scheduling a legislative-type hearing on July 31, 1978, the day upon which Service Order No. 1309 was to expire. This procedure is not required by section 1(15) of the In-

terstate Commerce Act, which authorizes the entry of emergency car service orders without any procedural requirements.

At this hearing, views were presented by a spokesman for Representative Perkins of Kentucky, several railroads, an intermodal carrier, freight forwarders, a wide spectrum of shippers concerned with a variety of commodities, and the Commission's Bureau of Investigations and Enforcement. Representative Perkins supported Service Order No. 1309, stressing rail car shortages in his State. The railroads opposed continuation of Service Order No. 1309, arguing that the 24-hour time standard for forwarding cars was inconsistent with the contemporary operating practices and was, indeed, counterproductive. While opposing any order with mandatory time limits, the railroads recognized that they could comply with an order establishing a time period greater than 24-hours. For these purposes, some suggest at least 72-hours. The shippers were divided. Some argued strongly in favor of continuing Service Order No. 1309, reasoning that the order had substantially improved problems of car supply. Other shippers disagreed, expressing concern that literal compliance with the order would force carriers to delay their shipments in order to move other cars simply to comply with the orders.

The intermodal carrier and the freight forwarders opposed extension of the orders on the grounds that the 24-hour requirement disrupted shipping schedules. The Bureau disclosed its enforcement efforts regarding the order, including the employment of an extra "day of grace" for enforcement purposes; took the position the 24-hour requirement could generally be complied with; and emphasized the usefulness of the order's exemption procedures, which had been successfully employed by two railroads. Finally, the Bureau pointed out that no railroad other than SP had requested blanket exemption.

We have decided to permit Service Order No. 1309 to expire and to issue the accompanying new car service order to meet the current emergency. This new order substitutes a 60-hour period for the prior order's 24-hour limits. We believe that this new standard adequately addresses the railroads' practical difficulties in complying with the 24-hour requirement, while assuring the prompt movement of cars during the current shortages.[1]

The Bureau of Investigations and Enforcement shall treat all failures to comply with the 60-hour requirement as violations of this new order, but may use its discretion in determining whether a formal action should be instituted. Finally, we find no justification for SP's request for a blanket exemption. We urge the carriers to resort to the exemption procedures. But in doing so, they must make a specific showing about a specific problem, accompanied by adequate supporting data.

It is ordered:

(1) Corrected Second Revised Service Order No. 1309 was allowed to expire at midnight, July 31, 1978.

(2) The accompanying new Car Service Order No. 1332 shall be issued effective at 12:01 a.m., August 8, 1978.

(3) SP's request for an exemption is denied.

By the Commission, Commissioners Murphy, Stafford, Gresham, and Clapp. Chairman O'Neal, Vice Chairman Christian voted to extend Car Service Order No. 1309, modified so as to provide for a 48-hour period for forwarding cars, and also to deny the Southern Pacific's petition for blanket exemption. Commissioner Brown was absent and did not specifically vote on this decision; at July 31, 1978, conference, however, she also voted to impose a 48-hour forwarding rule to deny the Southern Pacific petition.

H. GORDON HOMME, JR.,
Acting Secretary.

There are acute shortages of freight cars throughout the country resulting in failures of carriers to furnish an adequate supply of freight cars to shippers located on their lines. These shortages of freight cars are impeding both the domestic and export movements of agricultural, mineral, forest, and manufactured products, and other commodities. The existing car service rules, regulations, and practices of the railroads are ineffective with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of freight cars to meet the requirements of shippers. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered:

§ 1033.1332 Service Order No. 1332.

(a) *Railroad operating regulations for freight car movement.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) *Application:* (i) The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(ii) This order shall apply to all freight cars which are listed in the Official Railway Equipment Register, ICC-R.E.R. No. 408, issued by W. J. Trezise, or successive issues thereof, as having one of the mechanical designations shown on pages 1167-1169 under the headings: "Class 'X'—Box Car Type," "Class 'G'—Gondola Car Type," "Class 'H'—Hopper Car Type," "Class 'F'—Flat Car Type", and those special type cars described under the heading "Class 'L'—Special Car Type" which bear mechanical designations "LC"—Boxcar with roof hatches, "LO"—Covered Hopper Car, and "LU"—Boxcar with doors running substantially the length of the car, including cars bearing mechanical designations modified in the manner described in the various notes thereto.

(iii) *Exception.* Empty cars owned by The Alaska Railroad, while held in the State of Washington, pursuant to instructions of the car owner, are exempt from the provisions of this order.

(iv) *Exception.* Empty cars of private ownership reported and awaiting instructions from the car owner are exempt from the provisions of this order.

(v) *Exception.* To alleviate hardships or inequities, including but not limited to those caused by extreme weather disruptions, exceptions to this order may be authorized to the carrier by the Railroad Service Board, Interstate Commerce Commission, Washington, D.C. Requests for such exceptions may be made only by carriers and shall be sent to W. H. Van Slyke, chairman, Car Service Division, Association of American Railroads, Washington, D.C., for recording and submission to the Railroad Service Board, Interstate Commerce Commission, for consideration.

(vi) *Exception.* Cars held less than 7 days because daily train or switching service required for movement to or from point where held is not scheduled are exempt from the provisions of this order.

(vii) Actual placement means placing a car in an accessible position for loading or unloading, or placing on an industrial interchange track serving the consignor or consignee. If such placing is prevented by any cause attributable to consignor or consignee and car is placed on the private or other-than-

[1] This decision is without prejudice to decisions to be reached in pending cases such as Ex Parte 344, *Terminal Performance Standards Governing the Transportation of Non-Perishable Commodities.* Nor does this decision modify the special requirements applicable to the unique transportation characteristics of perishable freight. These goods plainly require expedited handling. See Ex Parte 284, *Investigation Into the Need for Defining Reasonable Dispatch (Perishable Commodities).*

public-delivery tracks serving the consignor or consignee, it shall be considered constructively placed without notice.

(viii) Holidays shall be those listed in Item 525 of Agent D. M. Rogers' Tariff 4-K, ICC H-74, General Car Demurrage Rules and Charges, supplements, thereto, or successive issues thereof.

(ix) *Definitions.* System cars are cars bearing the registered reporting marks of the railroad holding the cars. Foreign cars are cars bearing the registered reporting marks of a railroad other than the one holding the car. Private cars are cars bearing the registered reporting marks of a company or person other than a railroad.

(x) *Records Required.* Carriers shall maintain a written record showing for each car the actual date and time of arrival, placement, notice, release, removal, designation for repairs, cleaning or weighing, and completion of repairs, cleaning or weighing. Such records shall be maintained at the yard or station where such cars are held, or if held at a non-agency station, at the station responsible for such non-agency station.

(2) *Placing of cars.* (i) Loaded cars shall be actually or constructively placed within 60 hours, exclusive of Saturdays, Sundays, and holidays, following arrival at destination or after arrival at the yard from which cars are dispatched for actual placement.

(ii) Empty foreign and private cars which after placement will be subject to demurrage, storage, or detention rules applicable to cars for loading, or which are subject to storage rules and charges applicable to assigned cars held empty awaiting placement for loading by the assignee, shall be actually placed or appropriate notice as required by applicable tariffs issued within 60 hours, exclusive of Saturdays, Sundays, and holidays, after arrival at the point where held.

(iii) When delivery of a car, either empty or loaded, consigned or ordered to an industrial interchange track or to an other-than-public-delivery track, cannot be made because of any condition attributable to consignor or consignee, such car shall be held at destination or, if it cannot reasonably be accommodated there, at an available hold point; and constructive placement notice shall be sent or given the consignor or consignee within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at destination or hold point.

(iv) Proper notice for cars placed on public delivery tracks shall be sent or given within 24 hours after placement, exclusive of Saturdays, Sundays, and holidays.

(v) Cars held at destination for accessorial terminal services described in the applicable tariffs, such as holding for orders or inspection, shall be placed on unloading, hold, or inspection tracks; and proper notice shall be given within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at destination or at hold point. Time and charges shall be computed following such notice and demurrage or detention charges assessed in accordance with provisions of governing tariffs.

(3) *Removal of cars.* (i) Empty cars must be removed from point of unloading or interchange tracks of industrial plants within 60 hours, exclusive of Sundays and holidays, following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper for reloading within such 60-hour period. Empty foreign or private cars not ordered for loading at point where made empty must be forwarded or set aside to be cleaned, repaired, or weighed, if to be weighed at that point, within 60 hours following removal of empty cars. Empty system cars not required for loading may be held on carrier tracks at any point on the lines of the car owner, after completion of any light repairs, cleaning or weighing that may be required. (See subparagraph (5) of this paragraph.)

(ii) Outbound loaded freight cars must be removed from point of loading or interchange tracks of industrial plants within 60 hours, exclusive of Sundays and holidays, following acceptance by carrier of the shipper instructions covering the cars.

(iii) Cars subject to subdivision (i) and (ii) of this subparagraph not made accessible to the carrier, shall be subject to demurrage until such time as they become, and remain, accessible to the carrier.

(iv) Cars shall not be removed from point of unloading or from industrial interchange tracks, nor released from demurrage or detention status, until all bracing, blocking, dunnage, paper, residue of lading, debris, and other foreign matter directly related to the inbound load have been removed from the car in accordance with the requirements of Rules 14 and 27 of the Uniform Freight Classification, ICC 9, issued by G. F. Earl, supplements thereto, or reissues thereof.

Exception. Dunnage being returned to shipper under provisions of the applicable tariffs may be left in cars released as empty, provided that proper shipper instructions are received by the carrier prior to 5 p.m. of the first day, which is not a Saturday, Sunday, or holiday, immediately following release of the car.

(4) *Forwarding of cars.* (i) Loaded cars and empty foreign or private cars shall be forwarded within 60 hours, except cars described in subdivisions (ii) or (iii), of this subparagraph, or cars described in subdivision (ii) of subparagraph (2) of this paragraph.

(ii) *Exception.* Loaded cars held subject to instructions of consignee, consignor, or other qualified owner of the freight contained therein, while subject to applicable tariffs.

(iii) *Exception.* Cars held for repairs, weighing, or cleaning. (See section (5).)

(5) *Cars held for repairs, weighing, or cleaning.* (i) Cars of system, foreign, or private ownership which are held for light repairs or cleaning shall be placed on repair or cleaning tracks within 60 hours after time carded for repairs or cleaning. Light repairs or cleaning shall be accomplished within 24 hours, exclusive of Sundays and holidays, after placement on repair or cleaning tracks; except that when necessary to order material from car owner to make the repairs to foreign or private cars held awaiting such material, repairs shall be completed within 24 hours, exclusive of Sundays and holidays, after receipt of such material at the station at which the repair point is located.

(ii) Light repairs are defined as repairs requiring less than 20 man-hours by repair track forces to complete.

(iii) Cars which must be weighed shall be weighed and restenciled, if required, within 60 hours, exclusive of Sundays and holidays, after arrival at the point at which weighing is to be accomplished, or after request for weight is received, if weights are requested by shipper or by car owner.

(iv) Cars which have been repaired, cleaned or weighed shall become subject to sections 2, 3, or 4, as applicable, from the date such repairs, cleaning, or weighing have been accomplished.

(6) *Movement of freight cars.* (i) No common carrier by railroad subject to the Interstate Commerce Act shall delay the movement of cars by holding such cars in yards, terminals, or sidings for the purpose of increasing the time in transit of such cars.

(ii) Cars shall not be set out between terminals except in cases of emergency.

(iii) Back-hauling cars for the purpose of increasing the time in transit is prohibited.

(iv) Through cars shall not be handled on local or way freight trains for the purpose of increasing the time in transit of such cars.

(v) The use by any common carrier by railroad, or the acceptance of instructions from the shipper, for the movement of cars over its line via any route other than its shortest available route or its usual and customary fast freight route from point of receipt of the car from consignor, or connecting line, to point of delivery to consignee, or to next connecting line, except for the purpose of according a lawfully es-

tablished transit privilege (not including a diversion or reconsignment privilege) is hereby prohibited.

(7) *Force majeure defence protected.* Nothing in this order shall deny any carrier its defence of force majeure as construed by the courts.

(b) *Rules and regulations suspended.* The operation of all rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Effective date.* This order shall become effective at 12:01 a.m., August 8, 1978.

(d) *Expiration date.* This order shall expire at 11:59 p.m., August 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17))

A copy of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Commissioners Murphy, Stafford, Gresham, and Clapp. Chairman O'Neal and Vice Chairman Christian voted to extend Car Service Order No. 1309, modified so as to provide for a 48-hour period for forwarding cars, and also to deny the Southern Pacific's petition for blanket exemption. Commissioner Brown was absent and did not specifically vote on this decision; at the July 31, 1978 conference, however, she also voted to impose a 48-hour forwarding rule and to deny the Southern Pacific petition.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-22265 Filed 8-7-78; 4:14 p.m.]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Browns Park National Wildlife Refuge, Colo., to Upland Game Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to upland game hunting of Browns Park 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: Cottontail rabbit season, September 9, 1978, through February 28, 1979, inclusive.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager, Browns Park National Wildlife Refuge, Greystone Route, Maybell, Colo. 81640, telephone 303-365-3695.

SUPPLEMENTARY INFORMATION:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of cottontail rabbits is permitted on the Browns Park National Wildlife Refuge, Colo., except in those areas designated by signs as closed to hunting. These areas are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, P.O. Box 25486, Denver, Colo. 80215. Upland game hunting shall be in accordance with all applicable State regulations.

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.

JAMES A. CREASY,
Refuge Manager, Browns Park National Wildlife Refuge, Maybell, Colo.

JULY 24, 1978.

[FR Doc. 78-22170 Filed 8-8-78; 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.

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 70, 73]

PHYSICAL PROTECTION OF PLANTS AND MATERIALS

Proposed Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Revised proposed rule.

SUMMARY: In July 1977 the Commission published for public comment proposed amendments to its regulations for strengthened phycial protection for strategic special nuclear material and for certain fuel cycle facilities, associated transportation and other activities involving significant quantities of strategic special nuclear material. Extensive comments were received and considered. The Commission is now publishing revised propsed amendments for public comment on those changes that have been made. In particular the Commission requests comments on the changes made.

DATES: Comments must be received on or before September 25, 1978.

ADDRESSES: Comments or suggestions for consideration in connection with the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. L. J. Evans, Jr., Chief, Requirements Analysis Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4043 or Mr. R. J. Jones, Chief, Material Protection Standards Branch, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-5907.

SUPPLEMENTARY INFORMATION: On July 5, 1977, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (42 FR 34310) proposed amendments to 10 CFR Part 73 of its regulations. Interested persons were invited to submit written comments and suggestions in connection with the proposed amendments within 45 days after publication in the FEDERAL REGISTER. The comment period was subsequently extended thirty days. Upon consideration of the comments received on the proposed amendments published on July 5, 1977 and upon consideration of other factors involved the Nuclear Regulatory Commission has decided to publish revised proposed amendments to obtain further public comment on the changes that have been made to the proposed amendments.

Significant differences from the proposed amendments published for comment on July 5, 1977 are: (1) The definition of the conspiracy threat has been changed to a conspiracy between individuals in any position who may have access to and detailed knowledge of the facilities and activities referred to in § 73.20(a) or items that could facilitate theft of special nuclear material or both; (2) export/import requirements have been revised to reflect the jurisdictional aspects of the regulation; (3) the phrase "* * * but not necessarily limited to * * *" has been deleted from the general performance requirements and capability requirements; (4) the package search requirements have been changed so that packages carried into a protected area by persons having access authorization need only be searched at random when that person is searched. The package search requirement also has been changed to require only random search of packages delivered into a protected area; (5) the contingency and response plan requirements for in transit protection have been revised to add more detailed response requirements consistent with the fixed site requirements; (6) the requirement for three armed escorts on cargo aircraft and for sea shipments has been changed to two, (7) the requirements for Pu and U-233 containers resistant to small arms fire has been deleted; (8) the export/import security plan approval requirement has been changed to apply to all shipments and has been clarified as to timing; (9) the requirement for alarm stations to be considered vital areas has been changed; (10) the use of vault type rooms for storage of strategic special nuclear material directly usable in a nuclear explosive device has been prohibited and the definition of vault changed to better reflect the purpose of vaults; (11) the word immediately has been deleted from the requirement that armed response personnel be immediately available; (12) definitions have been added for deceit, stealth, and force and other changes in wording and language were made throughout the rule to clarify the intent and be more specific in the meaning of the requirements; (13) obsolete sections to be deleted when the effective rule is published have been noted; and (14) planning and implementation times have been changed.

The following discussion pertains to items (1) through (14) above.

(1) Commenters stated that without some limit to the number of conspirators it would be impossible to design a protection system against an unlimited number of employees. Commenters also stated that some credit should be given cleared employees.

The safeguards focus should be on neutralizing adversary capabilities, not on the number of adversaries. A more realistic and effective approach to the internal threat is to apply a systems capability measure. In this regard, the amendments have ben revised to add more detail to the reference systems in §§ 73.26 and 73.46 to assist the licensee in bounding the threat.

Although the Commission recognizes that individual material access authorization would give an added measure of assurance against a conspiracy, it believes that giving absolute credit for such access authorizations to defeat an internal threat to divert or steal strategic special nuclear material is unreasonable and not supported by historical evidence. Rather, it believes that, in addition to individual material access authorizations, a prudent safeguards system should include other measures designed to protect against conspiracy.

(2) International Transport Protection.—Commenters stated that protection of export and import shipments outside the United States should be arranged through international agreements rather than unilateral regulations. Commenters questioned the authority of the NRC to regulate activities outside the U.S. and the ability of licensees or their transport agents to assure compliance with such regulations.

The primary issue appears to be whether NRC can require armed guards to accompany an import shipment from its last foreign terminal,

and accompany and export shipment to its first foreign terminal. Under the Atomic Energy Act of 1954, as amended, NRC has responsibility for insuring the safeguarding of special nuclear material. The acts of importation or exportation commence or end, respectively, within the geographical limits of the United States and physical protection requirements, including armed guards, may clearly be mandated at those points. In addition, if it is reasonably necessary to protect the material while transiting any part of the United States, appropriate conditions may be placed upon the shipment. In practice, if this requires armed guards to come aboard the ship or aircraft at a foreign port, or to accompany an export shipment to a foreign port, it is reasonable to require them as a condition of exporting or importing formula quantities.

International agreements concerning the protection of international shipments is an aim which the NRC supports. However, until such agreement is reached, the NRC has little choice but to continue its present policy of assuring the protection of export and import shipments through requirements imposed upon U.S. licensees. The export and import licensing process involves not only the licensee and NRC, but also the executive branch and various foreign nations and foreign agencies. For each shipment, details of protection are considered during the licensing process, including the details of how the protection requirements will be carried out. Matters which involve the cooperation of foreign nations are carefully worked out in advance so as to assure that the requirements ultimately imposed upon a U.S. licensee can credibly be carried out by him. The rule has been revised to reflect the jurisdictional aspect of the regulation.

(3) Commenters noted that the phrase "* * * but not necessarily limited to * * *" in the general performance requirements and the capability requirements could lead to unlimited ratcheting without benefit of rulemaking.

The capability and performance requirements are broadly stated to permit flexibility in the design of licensee systems. They are so stated so as to encompass all that is needed in a safeguards security system so that such an openended phrase is not needed. The revised amendments have been changed to delete the phrase wherever it appeared in the performance and capability requirements.

(4) Commenters noted that it did not seem appropriate to search persons having access authorizations on a random basis but to search any packages they might be carrying on a 100 percent basis. The revised amendments require packages carried into a protected area by persons having access authorizations to be searched only when that person is selected for random search.

(5) Staff noted that the response requirements for in transit protection were not consistent with those for fixed sites because the details of guard and armed response personnel response was not stated. The rule has been revised to add such detailed requirements consistent with those for fixed sites.

(6) Aircraft and Sea Shipment Armed Escorts.—Commenters identified several potential problems with armed escorts on aircraft:

a. May not be permitted by aircraft pilot or airline;

b. May not be enough seating capacity on cargo plan so escort could get "bumped";

c. Could cause problems by having armed escorts at foreign airports.

These problems have been discussed with several airlines and with State Department personnel. The solution to the problems is advance planning. Airlines have stated that given advance notice and assurance of trained personnel they see no problem. Prior arrangements with the aircraft pilot also can ascertain whether his permission will be granted. Export/import shipping arrangements also should determine the arrangements that should be made and notifications for armed escorts to accompany shipments. Checks with airlines showed that three escorts could be accommodated on their cargo planes. Note, however, that the rule has been changed to require only two escorts because it appears that three armed escorts on cargo aircraft are not needed. This change also has been made for sea shipments.

(7) Comments indicated that it was inappropriate to specify container characteristics in this rule. The NRC specifies container approved criteria in part 71. The rule has been changed to delete the requirements for containers resistant to small arms fire. Any requirements for Pu and U-233 containers will be included in part 71.

(8) Comments questioned the need for approval of specific export/import plans if an overall plan had been approved. Comments also questioned whether the seven day notice period of § 73.72 was sufficient for the specific shipment security approval.

Each shipment has some unique characteristics that normally cannot be covered in a general security plan. This calls for approvals for each shipment or detailed security plans that cover such characteristics for routine shipments. This is true for both domestic and export/import shipments. The plans for any shipment must be approved prior to the seven day shipping notice. Depending on the details, it may take longer than seven days to approve a shipment security plan. The rule has been changed to apply to both domestic and to export/import shipments and to clarify the relationship of the approval to the seven day notice.

(9) Comments questioned the need for the secondary alarm station to be in the protected area and for the alarm stations to be vital areas thus requiring them to be in a protected area.

The intent of the requirement is to have the alarm stations to be hardened, access controlled areas. The secondary station does not have to be within the protected area but should be "on-site," i.e., within the confines of the owner-controlled area. The rule has been changed accordingly.

(10) Staff comments and system evaluation experience has shown that storage in vault type rooms of strategic special nuclear material that is directly useable in a nuclear explosive device may not provide acceptable penetration resistance or delay time in the context of the stated threat. The revised amendments have been changed to require the storage of such material only in vaults. The definition of vaults presently in § 73.2(n) also has been changed to better reflect the purpose of vaults.

(11) Guards and Armed Response Personnel Other Duties and Immediate Response.—Commenters questioned whether guards and armed response personnel could have other duties or if they had to be dedicated to response. The question was raised as to what was meant by "immediately available."

Guards and armed response personnel can have other duties so long as such duties do not interfere with their response to a safeguards contingency. Normally it is expected that the response force would be made up of guards who have routine duties other than response, other members of the licensee's organization who are qualified and trained in accordance with appendix B, and guards from the licensee's organization who may be located at a facility that is adjacent to the protected area. Guards manning the alarm stations have continuing duties in case of an assault and are not considered to be part of the response force. The determination of "immediately available" will depend on how the licensee response plan is structured and the duties and responsibilities of the response personnel. The word immediately has been deleted as being unnecessary.

(12) Questions were raised about the meaning of a number of terms in the

proposed rule. Response to these questions is made in several ways:

a. Definitions are added for deceit, stealth and force;

b. Changes in wording and language are made to make the meaning clear without special definition; (in particular extensive changes were made to § 73.25 to more clearly define the required transportation protection capabilities);

c. Guidance as to the intent of a term is provided by means of a regulatory guide or NUREG document, e.g., duress alarms are the subject of a forthcoming NUREG report; or

d. No change is made because the wording appeared to be sufficiently clear.

(13) There was considerable confusion with regard to the present sections in part 73 and what would happen to them. The statement of considerations for the proposed rule indicated that they would be deleted but the amendments themselves did not. The revised amendments have been changed to state which sections would be deleted and when. It is noted that § 73.50 is not being deleted at this time but being revised to apply only to spent fuel storage other than at a power reactor.

(14) Comments stated that there was insufficient time to properly plan a revised security program and to implement it. The Commission agrees that adequate time must be allowed for proper planning and implementation to assure effective programs. The rule has been changed to allow more time for both planning and implementation. Allowance also has been made for installation and construction that may require longer than the specified times in specific cases.

In addition to the comments that resulted in changes in the proposed amendments a number of other issues were raised which resulted in no changes to the proposed amendments but which warrant discussion and explanation.

(1) *External threat and general performance requirements.* Comments were directed at several aspects of the threat and its application as a general performance requirement. The comments can be categorized generally as follows: (*a*) Level of threat; (*b*) definition of threat; (*c*) application of general performance requirement.

(a) Comments were made that the threat was not supported by evidence. Some commenters felt the threat was not conservative enough while others felt it was overconservative.

The Commission directed that a reevaluation of the threat studies be conducted by the staff. The results of this reevaluation do not impact the level of threat to be considered in safeguards system design.

(b) Commenters stated that without bounds the threat could not be used effectively as a general performance requirement since licensees would not know the bounds to place on their physical protection systems. Commenters stated that a licensee could not know whether his physical protection system met the requirements because no bounds were given for the threat and general performance requirements.

The purpose of the threat defined in the proposed amendments is to define the general character of the domestic safeguards challenge. It is intended to provide a design basis for physical protection systems; therefore, additional adversary attributes are not necessary to serve this purpose. Physical protection systems, when designed to the level specified in the general performance sections of the rule and in accordance with the reference system specified in the rule and other design guidances to be provided along with the final rule, will be responsive to a general range of threats characterized by that stated in the regulations.

With respect to specific numbers of adversaries, the numbers are not as significant as are the capabilities and resources of the adversary. For example, the threat from a disorganized mob of 50 or so people is much different from that of only a few well organized, well trained people.

Given that the described threat is a design basis for a physical protection system, additional design creteria are given in the form of required system capabilities. These capabilities are further supported by the subsystems and components of the reference systems in the regulations designed to meet the general performance requirements and required capabilities. Additional guidance to assist the licensee in the design of his safeguards system is in preparation and will be promulgated in regulatory guides and NUREG reports. This type of guidance will provide the logic to relate the subsystems and components of physical protection systems to the required capabilities and the general performance requirements. This logic will provide design criteria that may be used by the licensee and show how the general performance requirements and system capabilities may be used in the design of a specific physical protection system. Draft copies of this guidance will be circulated for comment. Further, licensees will obtain guidance through the issuance of license review criteria for use in physical protection system design and in the license review process. Appropriate references to applicable regulatory guides, NUREG documents and other publications responsive to specified regulatory requirements will be provided in both the design guidance documents and the evaluation criteria documents. Enforcement of the regulation will be based on the specific approved licensee plan.

(c) Commenters stated that the threat or general performance requirement should be applied in relation to the consequences of a successful adversary action as well as in relation to the usefulness of the material for malevolent uses.

Due to the disasterous consequences of the successful detonation of a clandestine weapon conservative policy dictates the need to consider safeguards systems exclusive of other considerations such as the form of the strategic special nuclear material and the probability of an adversary constructing a nuclear fission device. Nevertheless in one instance the rule has been strengthened by requiring material directly useable in a nuclear fission device to be stored only in a vault.

(2) *Use of deadly force.* Comments indicated that requiring private guards to interpose themselves and to use deadly force could be in conflict with State and local laws and was beyond what should be expected of private industry. It was suggested that legislation be obtained to permit protection of strategic special nuclear material by use of deadly force and that seizure or diversion of strategic special nuclear material be made a Federal offense with severe criminal penalties imposed.

The Commission has carefully considered the use of deadly force in the overall system of protection of formula quantities of strategic special nuclear material. A preliminary observation is that armed private industrial guards are, in fact, commonplace. They are found in airports, banks, with armored trucks transporting currency, in the employ of railroads, and frequently in large shopping centers. Thus, the requirement for armed guards to protect property is not a departure from an accepted industrial practice.

Section 73.46(h)(4) of the proposed amendments states certain basic rules on how armed guards are to function. The rule as stated in § 73.46(h) is not new, it merely repeats verbatim presently effective 10 CFR 73.50(g)(2). A recent amendment to this paragraph further clarified expected guard response. (See 42 FR 64103.)

In view, however, of the comments received, some considerations may be repeated and restated for clarification. First: An authorized guard, as a person fulfilling a legally recognized role in protecting property, is generally under no duty to retreat from a threat to his life in the performance of his job. In many States there is simply no duty to retreat (e.g., *People* v. *Estrada*, 213 P. 67 (Calif. 1923); *Perez* v. *State*, *300* P.

428 (Okla. 1931)). In other States a person need not retreat in his place of business (e.g., *State* v. *Feltovic*, 110 Conn. 303, 147 A. 801 (1929)). It is also accepted common law that a person lawfully arresting need not retreat in face of resistance (see e.g., *Purdon's Pennsylvania Statutes*, Annotated, section 18-505(b)(2)(ii)(B)). A guard's job includes the investigation of intrusions or unauthorized entry to protected areas. If circumstances warrant, generally the guard may arrest for an offense committed in his presence (such offenses may range from trespass under local law to a felony under Federal law, an attempt to steal or divert special nuclear material; see section 222 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2272).

Another aspect of the response requirement also requires clarification. The requirement as now written, adopted verbatim from 10 CFR 73.50(g)(2), places a duty on licensees to instruct their guards to prevent or impede acts of radiological sabotage or theft of strategic special nuclear material and that they may use force as necessary to counter force directed at them, including the use of deadly force when the guard believes it reasonably necessary in self-defense or defense of others. Note that the requirement is to instruct guards to prevent or impede attempts at theft, not to require guards to use force without discretion. The licensee is also to tell his guards that they may use force, but only the amount of force commensurate with force directed at them—the guards. Thus, if an intruder uses no force, the guard is not called upon to use force. Deadly force is referred to only in the context of self-defense and defense of others. It is expected, as a minimum, that the employer of armed guards will allow a guard to use his weapons when the guard has a reasonable belief it is necessary to prevent death or grievious bodily injury. Indeed, in view of the reference system requirement that he investigate intrusions or unauthorized entries and try to forestall theft, diversion, or sabotage, it is seen as essential for the protection of the guard to allow him to use his weapons under such circumstances.

It is important also to point out that the decision to use force, including deadly force, is made by the guard, not by his supervisor or his employer. In a civilian context, the justification for the use of force must rest upon the reasonable belief of the person using it. The allowance of the use of deadly force in self-defense or defense of others, i.e., when there is a reasonable belief it is necessary to prevent death or grievious bodily injury, is clearly within the mainstream of American law.

Licensees who believe any part of the guard response rule to be demonstrably illegal under the law of their respective jurisdictions may always request an exemption. However, guard response is viewed as an important element of the physical protection system and any relaxation of the rule in this regard would require a commensurate strengthening of other system components.

The Commission does not believe legislation is required in the matter of the use of deadly force nor is legislation required to impose penalties for theft or diversion of strategic special nuclear material. The Atomic Energy Act of 1954 as amended, already provides severe penalties for the unauthorized possession, or attempt to gain possession, of special nuclear material. Section 57a. of the act (42 U.S.C. 2077) makes it unlawful for any person to acquire or possess special nuclear material without a specific or general license issued by NRC. Section 222 (42 U.S.C. 2272) makes it a felony to wilfully violate, attempt to violate, or conspire to violate section 57. The penalty may be a fine up to $10,000, imprisonment for up to 10 years, or both. If the offense is committed with an intent to injure the United States or to secure an advantage to any foreign nation, the punishment may be imprisonment for life, or any term of years, or a fine up to $20,000, or both.

(3) *Use of Government guards.* Commenters stated that the level of force required by the rule is beyond that which should be expected of private industry. One commenter recommended that NRC restudy the use of public sector personnel to guard licensed strategic special nuclear material. Specifically, commenters gave several reasons for these comments, including: (1) That the private sector cannot satisfy the proposed transportation requirements with commercially available equipment; (2) there is no evidence to support the design threat level stated in the rule, and, therefore, if the Government establishes a need to protect against such a threat, the Government should do it; (3) the rule is so open-ended only Federal forces could satisfy it; and (4) private "SWAT teams" should not be created to suppress crime.

The Security Agency study, done in compliance with the Energy Reorganization Act of 1974, concluded that licensee guards, properly trained and equipped, could be as effective as Federal forces. In fact, the Federal Government employs private guards to protect federally owned strategic special nuclear material. DOE, which uses both public and private sector guards, has stated in congressional testimony (Committee on Government Affairs, March 23, 1978) that these guards are equally effective. In addition, the Security Agency study (SAS) reviewed a number of other issues applicable to the question of whether Government or private guards should be responsible for nuclear security and concluded that there was no reason this responsibility should not continue to rest with the private sector. Since this rule does not increase safeguards requirements beyond those considered by the SAS, its conclusions remain valid.

Nevertheless, Government has a responsibility to assist licensees in the protection of their facilities against theft of strategic special nuclear material particularly in the face of deteriorating civil order. This fact is recognized in both the proposed upgrade rule and the recently published contingency planning rule (43 FR 11962).

Regarding the specific reasons why commenters recommended Government guards, the first, that the private sector cannot satisfy the transportation requirements with commercially available equipment, is not valid. The staff has made numerous changes to the proposed rule which are responsive to public comments and as modified, the transportation requirements of the rule can be satisfied with commercially available equipment. Regarding the second reason cited, the proposed threat level is reflective of a number of studies which were extrapolated from historical evidence, communications with various law enforcement agencies, review of actual or threatened violence in the commercial nuclear industry, and prudent judgment by NRC staff based on consideration of all of this information. The results of these studies are reflected in the Joint ERDA/NRC Task Force report (NUREG 0095) and the GESMO safeguards study (NUREG 0414), which recommended protection against essentially the same threat level as that established in the rule. Both of these reports reflected the threat information available to their preparers at that time. In addition, the results of a current thorough review of all threat information available to the Commission at this time does not provide any basis for changing the design threat.

Regarding the third reason, that the rule is too open ended, the phrase which caused the greatest concern about this (i.e., * * * but not necessarily limited to * * *) has been deleted because the capabilites and performance requirements are comprehensive enough to cover all safeguards contingencies. In addition, a section has been added to the statement of considerations which states what guidance will be used by NRC and issued to licensees to assure that the development, licensing review, and inspection of secu-

rity plans and facilities are not open ended.

Finally, this rule does not require licensees to use "private SWAT teams" to suppress crime in general. Licensees are not expected to assume normal responsibilities of Government defense or law enforcement agencies. Rather, licensees are required, in accordance with NRC regulations and their licensing agreement, only to prevent the theft of strategic special nuclear material and protect against the radiological sabotage of a licensed facility. There are no NRC requirements relating to: (1) Protection against ordinary theft of nonnuclear materials or other criminal acts; (2) apprehension and arrest of criminals; or (3) defeating an adversary force.

(4) *Conflict with State and local gun laws and use of automatic weapons.* Comments raised the question of the regulation requiring armament for guards and transport escorts in violation of State and local laws. In particular the question was raised of transport guards carrying weapons in different jurisdictions. Also the specific question of automatic weapons was raised.

It is true that both Federal and State law have limiting effects on the possession and use of firearms by private guards. In the main, these laws make "machine guns" unavailable (a "machine gun" is any weapon that fires more than one bullet with a single function of the trigger), precluding the use of automatic weapons by private persons.

Department of Energy couriers and guards (formerly AEC or ERDA couriers and guards) are authorized by Federal law to carry firearms (section 161k. of the Atomic Energy Act of 1954, as amended). They may also have automatic weapons (42 U.S.C. 925(a)(1)). DOE may also extend this authority to employees of its contractors engaged in the protection of property owned by the United States and located at facilities owned by or contracted to the United States (within the context of activities authorized by the Atomic Energy Act).

The Commission, however, believes that the increment in firepower added by automatic weapons would not be sufficiently significant in the overall physical protection system to warrant the use of such weapons by private guards.

The Commission recognizes that carriers would need to consider the various local and State gun laws for the jurisdictions through which they would be transporting strategic special nuclear material. This is not a new situation. There are many companies transporting valuable shipments with armed escorts through various jurisdictions. This would indicate that it is not an insoluble problem.

It is not intended that the proposed amendments would override State and local laws. It is the belief of the Commission that adequate flexibility in armament, with respect to State and Federal laws, already exists and that no further legislation is necessary at this time absent a conclusive showing that automatic weapons are essential in the total physical protection system. Where a licensee can show conclusively that there is conflict with State and local laws alternative measures would be considered.

(5) *Comments indicated confusion regarding the status of research reactors under the proposed rule.* Commenters generally felt that research reactors should not be required to meet the stringent requirements of the proposed rule. Comments indicated that those organizations operating research reactors, such as universities, could not afford the added costs of the upgraded protection. It was also noted that imposition of these requirements on research reactors would be in violation of the Atomic Energy Act of 1954, as amended wherein the Commission should "* * * impose only such minimum amount of regulation * * * and will permit the conduct of widespread and diverse research and development."

The intent and context of the proposed regulation was to include only those research reactors having more than formula quantities of strategic special nuclear material that was not self protecting by being irradiated at the level specified in § 73.6(b), i.e., 100 rems per hour at 3 feet. A major part of the confusion apparently resulted from misunderstanding as to the treatment of the present sections in part 73. These sections would be removed when the new sections became effective. Coverage for research reactors having less than the formula quantity of strategic special nuclear material would continue to be covered under § 73.40. The Commission is considering a separate section in part 73 to cover research reactor protection just as there is a separate section, § 73.55, to cover the protection of power reactors. Until such an amendment is made, research reactors having more than formula quantities would be covered by the proposed regulation when it is made effective.

(6) *Performance-oriented requirements flexibility.* Commenters suggested that flexibility be allowed in the regulation to vary the number of escorts or escort vehicles, to use an unarmored vehicle that would be less conspicuous, to permit changes of routing en route, and to adopt requirements to site specific conditions. Other suggestions were made for changes in wording to permit exemptions for specific conditions or deletion of requirements that would not be appropriate for certain conditions.

The objective of the performance capability requirements is to provide flexibility to the licensee in designing his system to provide the designated capabilities. The capabilities are design goals for the licensee to fit to his individual site or transport conditions. The capabilities are the stated goals or requirements. Whether a given system actually attains a specific goal in practice will depend on the conditions pertaining at the time. The system should nevertheless be designed to attain the specified goals or capabilities under the conditions that exist at a given site or under a given transport situation. Guidance in the design of safeguards systems is being prepared and will be provided to the licensees. This guidance identifies various subsystems and components that can be used to attain the specified capabilities. The licensee must select the appropriate combinations for his needs. The first paragraphs of the system specification §§ 73.26 and 73.46 states that the Commission may authorize other measures if in its opinion the overall level of performance meets the general performance requirements and the performance capability requirements.

It is the intent of these capability requirements and general performance requirements to allow maximum flexibility to the licensee in designing his system. No exemptions to the specific requirements of § 73.26 or § 73.46 are needed so long as the differences are shown to meet the general performance and capability requirements.

(7) *Costs.* Commenters stated that the costs given in the statement of considerations were too low but provided no supporting data for higher costs. The comment also was made that some of the requirements could not be implemented at any cost but no details were given.

The Commission has studied the costs of the proposed amendments further and has had a value/impact analysis prepared on the basis of the reference system in the regulation. A copy of this analysis has been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

If the Commission adopts the proposed amendments to 10 CFR Part 73, each affected licensee would be given a period of 120 days following the effective date of the amendments to submit a revised fixed site safeguards physical protection plan and, if appropriate, a revised safeguards transportation protection plan describing how the licensee will comply with the requirements of § 73.20 (a)(1) and (a)(2). A licensee

would be given up to 300 days after the effective date of the amendments or 90 days after the submitted plan is approved, whichever is later, to implement the approved plan except for certain activities involving new construction, significant physical modification of existing structures, or major equipment installation for which 540 days or 180 days after the plan is approved would be allowed.

In addition, a licensee would be given up to 210 days after the effective date of these amendments to submit a revised fixed site safeguards physical protection plan and, if appropriate, a revised safeguards transportation protection plan describing how the licensee will comply with the requirements of § 73.20(a)(3).

A licensee would be given up to 390 days after the effective date of these amendments or 90 days after this latter plan is approved, whichever is later, to implement the approved plan except for activities specifically identified by the licensee which involve new construction, significant modification of existing structures or major equipment installation for which 540 days after the effective date of these amendments or 180 days after the plan(s) is approved, whichever is later, would be allowed.

The amendments would become effective 30 days after publication in the FEDERAL REGISTER.

The system specifications included in § 73.26 for transportation physical protection systems are based on comments received on the transportation protection requirements proposed for comment on November 13, 1974 (39 FR 40036) and subsequent considerations.

The commission has determined under Council of Environmental Quality guidelines and the criteria in 10 CFR Part 51 that an environmental impact statement for the proposed amendments to 10 CFR Part 73 is not required. Concurrently with publication of the notice of proposed rulemaking of July 5, 1977 (42 FR 34310) the Commission made available in its Public Documents Room at 1717 H Street NW., Washington, D.C. an "Environmental Impact Appraisal of Amendments To 10 CFR Part 73," to support a Negative Declaration. This document is appropriate for the revised proposed amendments as well.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 73 is contemplated.

1. Section 73.1(a) of 10 CFR Part 73 is revised to read as follows:

§ 73.1 Purpose and scope.

(a) *Purpose.* This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used, to protect against acts of radiological sabotage and prevention of theft of special nuclear material.

* * * * *

2. Sections 73.2(c), (f), (h), (k), (n), and (p) of 10 CFR Part 73 are revised to read as follows:

§ 73.2 Definitions.

As used in this part:

* * * * *

(c) "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

* * * * *

(f) "Physical Barrier" means

(1) Fences constructed of No. 11 American wire gage, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled outward between 30° amd 45° from the vertical, with an overall height of not less than 8 feet, including the barbed topping;

(2) Building walls, ceilings and floors constructed of stone, brick, cinder block, concrete, steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction, not part of a building, provided with a barbed topping described in paragraph (f)(1) of this section of a height of not less than 8 feet; or

(3) Any other physical obstruction constructed in a manner and of materials suitable for the purpose for which the obstruction is intended.

* * * * *

(h) "Vital area" means any area which contains vital equipment.

* * * * *

(k) "Isolation zone" means any area, clear of all objects which could conceal or shield an individual, adjacent to a physical barrier.

* * * * *

(n) "Vault" means a windowless enclosure constructed with walls, floor, roof and door(s) that will delay penetration appropriate to the response time of the local law enforcement authority that would respond to a safeguards contingency at the site.

* * * * *

(p) "Radiological sabotage" means any deliberate act directed against a plant or transport in which an activity licensed pursuant to the regulations in this chapter is conducted, or against a component of such a plant or transport which could directly or indirectly endanger the public health and safety by exposure to radiation.

3. Section 73.2 of 10 CFR Part 73 is amended to add paragraphs (x) thru (ff).

§73.2 Definitions.

As used in this part:

* * * * *

(x) "Strategic special nuclear material" means uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium.

(y) "Formula quantity" means strategic special nuclear material in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235 + 2.5 (grams U-233 + grams plutonium).

(z) "Transport" means any land, sea, or air conveyance or modules for these conveyances such as rail cars or standardized cargo containers.

(aa) "Incendiary device" means any self-contained device intended to create an intense fire that can damage normally flame resistant or retardant materials.

(bb) "Controlled access area" means any temporarily or permanently established clearly demarcated area, access to which is controlled and which affords isolation of the material, equipment or persons within it.

(cc) "Movement control center" means an operations center which is remote from transport activity and which maintains periodic position information on the movement of strategic special nuclear material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(dd) "Force" means potentially violent methods used to attempt to gain unauthorized access or introduce unauthorized materials into or remove stragetic special nuclear material from protected areas, vital areas, material access areas, controlled access areas, or transports.

(ee) "Stealth" means covert methods used to attempt to gain unauthorized access or introduce or remove unauthorized materials where the fact of

such attempt is concealed or an attempt is made to conceal it.

(ff) "Deceit" means methods used to attempt to gain unauthorized access or introduce or remove unauthorized materials where the attempt involves falsification to present the appearance of authorized access.

4. The undesignated first paragraph of § 73.6 is revised to read as follows:

§ 73.6 Exemptions of certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.70, and 73.72 with respect to the following special nuclear material:

* * * * *

5. Section 73.6 is amended to add paragraph (d) to read as follows:

§ 73.6 Exemptions of certain quantities and kinds of special nuclear material.

* * * * *

(d) Special nuclear material that is being transported by the United States Department of Energy transport system.

§§ 73.30 through 73.36 and 73.60 [Deleted]

6. Sections 73.30 through 73.36, and 73.60 are deleted.

7. The undesignated first paragraph of § 73.50 is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

Each licensee who is authorized to possess, use, or store formula quantities of strategic special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding other than at a nuclear reactor facility licensed pursuant to part 50 of this chapter shall comply with the following:

* * * * *

8. Section 73.40(a) is revised to read as follows:

§ 73.40 Physical protection: General requirements as fixed sites.

(a) Each licensee shall provide physical protection against industrial sabotage and against theft of special nuclear material at the fixed sites where licensed activities are conducted. Physical security systems shall be established and maintained by the licensee in accordance with security plans approved by the Nuclear Regulatory Commission.

(b) [Amended]

9. Paragraph 73.40(b) is revised to replace references to §§ 73.50 and 73.60 with references to §§ 73.20; 73.25; 73.26; 73.45; and 73.46.

10. New §§ 73.20, 73.25, 73.26, 73.27, 73.45, and 73.46 are added to read as follows:

§ 73.20 General performance requirements.

(a) In addition to any other requirements of this part, each licensee who is authorized to operate a fuel reprocessing plant pursuant to part 50 of this chapter; possesses or uses formula quantities of strategic special nuclear material at any site or contiguous sites subject to control by the licensee; is authorized to transport or deliver to a carrier for transportation pursuant to part 70 of this chapter formula quantities of strategic special nuclear material; takes delivery of formula quantities of strategic special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transportation; or imports or exports formula quantities of strategic special nuclear material shall establish and maintain or make arrangements for a physical protection system which will prevent with high assurance theft of strategic special nuclear material and protect against radiological sabotage by the following:

(1) A determined violent external assault, attack by stealth, or deceptive actions, by a small group with the following attributes, assistance and equipment: (i) Well-trained (including military training and skills) and dedicated individuals, (ii) inside assistance which may include a knowledgeable individual who attempts to participate in both a passive role (e.g., provide information) and an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), (iii) suitable weapons, up to and including handheld automatic weapons, equipped with silencers and having effective long range accuracy, (iv) handcarried equipment, including incapacitating agents and explosives for use as tools of entry or otherwise destroying the plant or transport integrity, and (v) the ability to operate as two or more teams,

(2) An individual, including an employee (in any position), and

(3) A conspiracy between individuals in any position who may have: (i) Access to and detailed knowledge of the facilities and activities referred to in § 73.20(a), or (ii) items that could facilitate theft of special nuclear material (e.g., small tools, substitute material, false documents, etc.), or both.

(b) To meet the general performance requirements of paragraph (a) of this section a licensee shall establish and maintain, or arrange for, a physical protection system that:

(1) Provides the performance capabilities described in § 73.25 for in-transit protection or in § 73.45 for fixed site protection unless otherwise authorized by the Commission;

(2) Is designed with sufficient redundancy and diversity to assure maintenance of the capabilities described in § 73.25 or § 73.45; and

(3) Includes a testing and maintenance program to assure control over all activities and devices affecting the effectiveness, reliability, and availability of the physical protection system, including a demonstration that any defects of such activities and devices will be promptly detected and corrected for the total period of time they are required as a part of the physical protection system.

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall:

(1) Within 120 days after the effective date of these amendments, submit a revised fixed site safeguards physical protection plan and, if appropriate, a revised safeguards transportation protection plan describing how the licensee will comply with the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(2) Within 300 days after the effective date of these amendments or 90 days after the plan submitted pursuant to paragraph (c)(1) of this section is approved, whichever is later, implement the approved plan except for activities specifically identified by the licensee which involve new construction, significant physical modification of existing structures or major equipment installation for which 540 days after the effective date of these amendments or 180 days after the plan(s) is approved, whichever is later, will be allowed.

(3) Within 210 days after the effective date of these amendments submit a revised fixed site safeguards physical protection plan and, if appropriate, a revised safeguards transportation protection plan describing how the licensee will comply with the requirements of paragraph (a)(3) of this section; and

(4) Within 390 days after the effective date of these amendments or 90 days after the plan(s) submitted pursuant to paragraph (c)(3) of this section is approved, whichever is later, implement the approved plan except for activities specifically identified by the licensee which involve new construction, significant modification of existing structures or major equipment installation for which 540 days after the effective date of these amendments or 180 days after the plan(s) is approved, whichever is later, will be allowed.

§ 73.25 Performance capabilities for physical protection of strategic special nuclear material in transit.

(a) To meet the general performance requirement of § 73.20 an in-transit physical protection system shall include the performance capabilities described in paragraphs (b) through (d) of this section unless otherwise authorized by the Commission.

(b) Restrict access to and activity in the vicinity of transports and strategic special nuclear material. To achieve this capability the physical protection system shall:

(1) Minimize the vulnerability of the strategic special nuclear material by using the following subfunctions and procedures:

(i) Preplanning itineraries for the movement of strategic special nuclear material;

(ii) Periodically updating knowledge of route conditions for the movement of strategic special nuclear material;

(iii) Maintaining knowledge of the status and position of the strategic special nuclear material en route; and

(iv) Determining and communicating alternative itineraries en route as conditions warrant.

(2) Detect and delay any unauthorized attempt to gain access or introduce unauthorized materials by stealth or force into the vicinity of transports at all stops using the following subsystems and subfunctions:

(i) Controlled access areas to isolate strategic special nuclear material or transports at all stops to assure that unauthorized persons or materials shall not have direct access to the transports or strategic special nuclear material;

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized penetration (or such attempts) of a controlled access area by persons, vehicles or materials at the time of the penetration (or attempt) so that the response can prevent the penetration (or attempt) from resulting in the theft of strategic special nuclear material or radiological sabotage.

(3) Detect and delay any unauthorized attempt to gain access by stealth or force into the vicinity of strategic special nuclear material on board moving transports using the following subsystems and subfunctions:

(i) Controlled access areas to assure unauthorized persons shall not have direct access to the strategic special nuclear material;

(ii) Secured cargo compartments; and

(iii) Monitoring and surveillance subsystems and procedures to detect, assess and communicate any unauthorized access into the vicinity of strategic special nuclear material or penetration of cargo compartments or controlled access areas (or such attempts) so that the response can prevent the theft of strategic special nuclear material.

(4) Detect attempts to gain unauthorized access or introduce unauthorized materials into the vicinity of transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and access criteria for persons, materials and vehicles; and

(ii) Access controls and procedures to verify the identity of persons, materials and vehicles and assess such identity against current authorization schedules and access criteria before permitting access and to intitiate response measures to deny unauthorized entries.

(c) Prevent or delay unauthorized entry or introduction of unauthorized materials into, and unauthorized removal of strategic special nuclear material from transports. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized entry or introduce unauthorized materials into transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for access into transports for both persons and materials; and

(ii) Entry controls and procedures to verify the identity of persons and materials and to permit transport entry only to those persons and materials specified by the current authorization schedules and entry criteria.

(2) Detect attempts to gain unauthorized entry or introduce unauthorized material into transports by stealth or force using the following subsystems and subfunctions:

(i) Transport features to delay access to strategic special nuclear material sufficient to permit the detection and response systems to function so as to prevent the theft of strategic special nuclear material;

(ii) Inspection and detection subsystems and procedures to detect unauthorized tampering with transports and cargo containers; and

(iii) Surveillance subsystems and procedures to detect, assess and communicate any unauthorized presence of persons or materials and any unauthorized attempt to penetrate the transport so that the response can prevent the theft of strategic special nuclear material.

(3) Prevent unauthorized removal of strategic special nuclear material from transports by deceit using the following subsystems and subfunctions:

(i) Authorization controls and procedures to provide current schedules for authorized removal of strategic special nuclear material which specify the persons authorized to remove and receive the material, the authorized times for such removal and receipt and authorized places for such removal and receipt.

(ii) Removal controls and procedures to establish removal procedures for transferring cargo in emergency situations; and

(iii) Removal controls and procedures to permit removal of strategic special nuclear material only after verification of the indentity of persons removing or receiving the strategic special nuclear material, and the identity and integrity of the strategic special nuclear material being removed from transports.

(4) Detect attempts to remove strategic special nuclear material from transports by stealth or force using the following subsystems and subfunctions:

(i) Transport features to delay unauthorized strategic special nuclear material removal attempts sufficient to assist detection and permit a response to prevent the theft of strategic special nuclear material; and

(ii) Detection subsystems and procedures to detect, assess and communicate any attempts at unauthorized removal of strategic special nuclear material so that response to the attempt can be such as to prevent the removal theft of strategic special nuclear material.

(d) Respond to safeguards contingencies and emergencies to assure that the two capabilities paragraphs (b) and (c) of this section are achieved, and to engage and impede adversary forces until local law enforcement forces arrive. To achieve this capability, the physical protection system shall:

(1) Respond rapidly and effectively to safeguards contingencies and emergencies using the following subsystems and subfunctions:

(i) A security organization composed of trained and qualified personnel, including armed escorts, one of whom is designated as escort commander, with procedures for command and control, to execute response functions.

(ii) Assessment procedures to assess the nature and extrent of security related incidents.

(iii) A predetermined plan to respond to safeguards contingency events.

(iv) Equipment and procedures to enable responses to security related incidents sufficiently rapid and effective to achieve the predetermined objective of each action.

(v) Equipment, vehicle design features, and procedures to protect security organization personnel, including those at the movement control center,

in their performance of assessment and response related functions.

(2) Transmit detection, assessment and other response related information using the following subsystems and subfunctions:

(i) Communications equipment and procedures to rapidly and accurately transmit security information among armed escorts.

(ii) Equipment and procedures for two-way communications between the escort commander and the movement control center to rapidly and accurately transmit assessment information and requests for assistance by local law enforcement forces, and to coordinate such assistance.

(iii) Communications equipment and procedures for the armed escorts and the movement control center personnel to notify local law enforcement forces of the need for assistance.

(3) Establish liaisons with local law enforcement authorities to arrange for assistance enroute.

(4) Assure that a single adversary action cannot destroy the capability of armed escorts to notify the local law enforcement forces of the need for assistance.

§ 73.26 Transportation physical protection systems, subsystems, elements components, and procedures.

(a) A transportation physical protection system established pursuant to the general performance requirements of § 73.20 and performance capability requirements of § 73.25 shall include, but are not necessarily limited to, the measures specified in paragraphs (b) through (1) of this section. The Commission may require, depending on the individual transportation conditions or circumstances, alternate or additional measures deemed necessary to meet the general performance requirements of § 73.20. The Commission also may authorize protection measures other than those required by this section if in its opinion the overall level of performance meets the general performance requirements of § 73.20 and the performance capability requirements of § 73.25.

(b) Planning and scheduling.

(1) Shipments shall be scheduled to avoid regular patterns and preplanned to avoid areas of natural disaster or civil disorders, such as strikes or riots. Such shipments shall be planned in order to avoid storage times in excess of 24 hours and to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept the shipment.

(2) Arrangements shall be made with law enforcement authorities along the route of shipments for their response to an emergency or a call for assistance.

(3) For any series of shipments of strategic special nuclear material by a licensee to the same consignee in which individual shipments are less than the quantities requiring physical protection in transit under 10 CFR 73.1(b)(2), but the total quantity for the series exceeds the formula quantity of strategic special nuclear material the licensee shall confirm and log the arrival at the final destination of each shipment in the series before releasing the subsequent shipment.

(4) Security arrangements for each shipment shall be approved by the Nuclear Regulatory Commission prior to the time for the seven day notice required by § 73.72. Information to be supplied to the Commission in addition to the general security plan information is as follows:

(i) Shipper, consignee, carriers, transfer points, modes of shipment;

(ii) Point where escorts will relinquish responsibility or will accept responsibility for the shipment;

(iii) Arrangements made for transfer of shipment security; and

(iv) Security arrangements at point where escorts accept responsibility for an import shipment.

(5) Hand-to-hand receipts shall be completed at origin and destination and at all points enroute where there is a transfer of custody.

(c) Export/import shipments.

(1) A licensee who imports formula quantities of strategic special nuclear material shall make arrangements to assure that such material will be protected in transit as follows:

(i) An individual designated by the licensee or his agent, or as specified by a contract of carriage, shall confirm the container count and examine locks and/or seals for evidence of tampering, at the first place in the United States at which the shipment is discharged for the arriving carrier.

(ii) The shipment shall be protected at all times within the geographical limits of the United States as provided in this section and §§ 73.25 and 73.27.

(2) A licensee who exports formula quantities of strategic special nuclear material shall comply with the requirements of this section and §§ 73.25 and 73.27, as applicable, up to the first point where the shipment is taken off the transport outside the United States.

(d) Security organization.

(1) The licensee or his agent shall establish a transportation security organization, including armed escorts, armed response personnel or guards, and a movement control center manned and equipped to monitor and control shipments, to communicate with local law enforcement authorities, and to respond to safeguards contingencies. All individuals engaged in the protection of a shipment, including armed escorts, armed response personnel, employees of the licensee or his agent who acompany the shipment, and the operators in the movement control center shall have an NRC or DOE material access authorization.[1]

(2) At least one full time member of the security organization who has the authority to direct the physical protection activities of the security organization shall be on duty at the movement control center during the course of any shipment.

(3) The licensee or his agent shall establish, maintain, and follow a management system to provide for the development, revision, implementation, and enforcement of transportation physical protection procedures. The system shall include:

(i) Written security procedures which document the structure of the transportation security organization and which detail the duties of drivers and escorts and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall reponsibility for the security function.

(4) Neither the licensee or his agent shall permit an individual to act as an escort or other security organization member unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with appendix B, of this part, "General Criteria for Security Personnel" to be published soon as an effective rule. Upon the request of an authorized representative of the Commission the licensee or his agent shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Armed escorts shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented.

(e) Contingency and response plans and procedures.

(1) The licensee or his agent shall establish, maintain, and follow a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to strategic special nuclear material in transit subject to the provisions of this section. Such safeguards contingency plan shall be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plan" (43 FR 11962).

(2) Upon detection of abnormal presence or activity of persons or vehicles attempting to penetrate a moving

[1] Proposed amendments requiring NRC material authorization program for licensee access to or control over special nuclear material (SECY-76-508) were published as a proposed rule on March 17, 1977 (42 FR 14880) and were discussed in a public hearing on July 10, 11, and 12, 1978.

convoy or persons attempting to gain access to a parked cargo vehicle or upon evidence or indication of penetration of the cargo vehicle the armed escorts or other armed response personnel shall:

(i) Determine whether or not a threat exists;

(ii) Assess the extent of the threat, if any;

(iii) Take immediate concurrent measures to neutralize the threat by:

(*a*) Making the necessary tactical moves to prevent or impede acts of radiological sabotage or theft of strategic special nuclear material, and

(*b*) Informing local law enforcement agencies of the threat and requesting assistance.

(3) The licensee or his agent shall instruct every armed escort and all armed response personnel to prevent or impede acts of radiological sabotage or theft of strategic special material by using sufficient force to counter the force directed at him including the use of deadly force when armed escorts or armed response personnel have a reasonable belief that it is necessary in self-defense or in the defense of others.

(f) Transfer and storage of strategic special nuclear material for domestic shipments.

(1) Strategic special nuclear material shall be placed in a protected area at transfer points if transfer is not immediate from one transport to another. Where a protected area is not available a controlled access area shall be established for the shipment. The transport may serve as a controlled access area.

(2) All transfers shall be protected by at least nine armed escorts or other armed personnel—one of whom shall serve as commander. At least seven of the armed personnel (including the commander) shall be available to protect the shipment and at least three of the seven shall keep the strategic special nuclear material under continuous surveillance while it is at the transfer point. The two remaining armed personnel shall take up positions at a remote monitoring location. The remote location may be a radio-equipped vehicle or a nearby place, apart from the shipment area, so that a single act cannot remove the capability of the personnel protecting the shipment for calling for assistance. Each of the nine armed escorts or other armed personnel shall be capable of maintaining communication with each other. The commander shall have the capability to communicate with the personnel at the remote location and with local law enforcement agencies for emergency assistance. In addition the armed escorts personnel at the remote location shall have the capability to communicate with the law enforcement agencies and with the shipment movement control center. The commander shall call the remote location at least every 30 minutes to report the status of the shipment. If the calls are not received within the prescribed time, the personnel in the remote location shall request assistance from the law enforcement authorities, notify the shipment movement control center and initiate the appropriate contingency plans. Armed escorts or other armed personnel shall observe the opening of the cargo compartment of the incoming transport and insure that the shipment is complete by checking locks and seals. A shipment loaded onto or transferred to another transport shall be checked to assure complete loading or transfer. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the transport departs from the terminal. The escorts shall observe the transport until it has departed and shall notify the licensee or his agent of the latest status immediately thereafter.

(g) Access control subsystems and procedures.

(1) A numbered picture badge identification procedure shall be used to identify all individuals who will have custody of a shipment. The identification procedure shall require that the individual who has possession of the strategic special nuclear material shall have, in advance, identification picture badges of all individuals who are to assume custody for the shipment. The shipment shall be released only when the individual who has possession of strategic special nuclear material has assured positive identification of all of the persons assuming custody for the shipment by comparing the copies of the identification badges that he has received in advance to identification badges that the individuals who will assume custody of the shipment carry.

(2) Access to protected areas, controlled access areas, transports, escort vehicles, aircraft, rail cars, and containers where strategic special nuclear material is contained shall be limited to individuals authorized access to these areas after they have been properly identified.

(3) Strategic special nuclear material shall be shipped in containers that are protected by tamper-indicating seals. The containers also shall be locked if they are not in another locked container or transport. The outermost container or transport also shall be protected by tamper-indicating seals.

(h) Test and maintenance programs.

The licensee or his agent shall establish, maintain and follow a test and maintenance program for communications equipment and other physical protection related devices and equipment used pursuant to this section which shall include the following:

(1) Tests and inspections shall be conducted during the installation, and construction of physical protection related subsystems and components to assure that they comply with their respective design criteria and performance specifications.

(2) Preoperational tests and inspections shall be conducted for physical protection related subsystems and components to demonstrate their effectiveness, availability, and reliability with respect to their respective design criteria and performance specifications.

(3) Operational tests and inspections shall be conducted for physical protection related subsystems and components to assure their maintenance in an operable and effective condition.

(4) Preventive maintenance programs shall be established for physical protection related subsystems and components to assure their continued maintenance in an operable and effective condition.

(5) All physical protection related subsystems and components shall be maintained in operable condition. Corrective action procedures and compensatory measures shall be developed and employed to assure that the effectiveness of the physical protection system is not reduced by any single failure or other contingencies affecting the operation of the physical protection related equipment or structures.

(6) The transportation security program shall be reviewed at least every 12 months or prior to each use, whichever is greater, by individuals independent of both security management and security supervision. Such a review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review and audit along with recommendations for improvements shall be documented, reported to the responsible organization management, and kept available for inspection for a period of five years.

(i) Shipment by road.

(1) A detailed route plan shall be prepared which shows the routes to be taken, the refueling and rest stops, and the call-in times to the movement control center. All shipments shall be made or primary highways with minimum use of secondary roads. All shipments shall be made without intermediate stops except for refueling, rest or emergency stops.

(2) Cargo compartments of the trucks or trailers shall be locked and protected by tamper-indicating seals.

(3) The shipment shall be protected by one of the following methods:

(i) A specially designed cargo vehicle truck or trailer that reduces the vulnerability to theft. Design features of the truck or trailer shall permit immobilization of the truck or of the cargo-carrying portion of the vehicle and shall provide a deterrent to physical penetration of the cargo compartment. Two separate escort vehicles shall accompany the cargo vehicle. There shall be a total of nine armed escorts with at least two in the cargo vehicle. Escorts may also operate the cargo and escort vehicles.

(ii) An armored car cargo vehicle. Three separate escort vehicles shall accompany such a cargo vehicle. There shall be a total of nine armed escorts, with at least two in the cargo vehicle. Escorts may also operate the cargo and escort vehicles.

(4) All escort vehicles shall be bullet-resisting.

(5) Procedures shall be established to assure that no unauthorized persons or materials are on the cargo vehicle before strategic special nuclear material is loaded, or on the escort vehicles, immediately before the trip begins.

(6) Cargo and escort vehicles shall maintain continuous intraconvoy two-way communication. In addition at least two of the vehicles shall be equipped with radio telephones having the capability of communicating with the movement control center. A redundant means of communication shall also be available. Calls to the movement control center shall be made at least every half hour to convey the status and position of the shipment. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify the law enforcement authorities and the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in appendix A of this part and initiate the appropriate contingency plan.

(7) At refueling, rest, or emergency stops at least nine armed escorts or other armed personnel shall be available to protect the shipment and at least three armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo compartment.

(8) Transfers to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(j) Shipment by Air.

(1) Except as specifically approved by the Nuclear Regulatory Commission, no shipment of special nuclear material shall be made in passenger aircraft in excess of (i) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (ii) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(2) All shipments on commercial cargo aircraft shall be accompanied by two armed escorts who shall be able to converse in a common language with the captain of the aircraft.

(3) Transfers of these shipments shall be minimized and shall be conducted in accordance with paragraph (f) of this section. Such shipments shall be scheduled so that the strategic special nuclear material is loaded last and unloaded first.

(4) At scheduled stops, at least nine armed escorts or other armed personnel shall be available to protect the shipment and at least three armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo compartment.

(5) Export shipments shall be accompanied by two armed escorts from the last terminal in the United States until the shipment is unloaded at a foreign terminal and prime responsibility for physical protection is assumed by agents of the consignee. While on foreign soil, the escorts may surrender their weapons to legally constituted local authorities. After leaving the last terminal in the United States the shipment shall be scheduled with no intermediate stops.

(6) Import shipments shall be accompanied by two armed escorts at all times within the geographical limits of the United States. These escorts shall provide physical protection for the shipment until relieved by verified agents of the U.S. consignee.

(7) Procedures shall be established to assure that no unauthorized persons or material are on the aircraft before strategic special nuclear material is loaded on board.

(8) Arrangements shall be made at all domestic airports to assure that the nine required armed escorts or other armed personnel are available and that the required security measures will be taken upon landing.

(9) Arrangements shall be made at the foreign terminal at which the shipment is to be unloaded to assure that security measures will be taken on arrival.

(k) Shipment by Rail.

(1) A shipment by rail shall be escorted by nine armed escorts in the shipment car or an escort car next to the shipment car of the train. At least three escorts shall keep the shipment car under continuous visual surveillance. Escorts shall detrain at stops when practicable and time permits to maintain the shipment cars under continuous visual surveillance and to check car or container locks and seals.

(2) Procedures shall be established to assure that no unauthorized persons or materials are on the shipment or escort car before strategic special nuclear material is loaded on board.

(3) Only containers weighing 5,000 lbs or more shall be shipped on open rail cars.

(4) A voice communication capability between the escorts and the movement control center shall be maintained. A redundant means of continuous communication also shall be available. Calls to the movement control center shall be made at least every half hour to convey the status and position of the shipment. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify the law enforcement authorities and the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part and initiate their contingency plan.

(5) Transfer to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(l) Shipment by Sea

(1) Shipments shall be made only on container-ships. The strategic special nuclear material container(s) shall be loaded into exclusive use cargo containers conforming to Amercian National Standards Institute (ANSI) MH5.1 or International Stardands Organization (ISO) 1496. Locks and seals shall be inspected by the escorts whenever access is possible.

(2) All shipments shall be accompanied by two armed escorts who shall be able to converse in a common language with the captain of the ship.

(3) Minimum domestic ports of call shall be scheduled and there shall be no scheduled transfer to other vessels after the shipment leaves the last port in the United States. Transfer to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(4)At all ports of call the excorts shall insure that the shipment is not removed. At least two armed escorts or other armed personnel shall maintain continous visual surveillance of the cargo area where the container is stored up to the time the ship departs.

(5) Export shipment shall be accompanied by two armed escorts from the last port in the United States until the shipment is unloaded at a foreign terminal and prime responsibility for physical protection is assumed by agents of the consignee. While on foreign soil, the escorts may surrender their weapons to legally constituted local authorities.

(6) Import shipments shall be accompanied by two armed escorts at all times within the geographical limits of the United States. These escorts shall

provide physical protection for the shipment until relieved by verified agents of the U.S. consignee.

(7) Ship-to-shore communications shall be available, and a ship-to-shore contact shall be made every 6 hours to relay position information, and the status of the shipment.

(8) Arrangements shall be made at the foreign terminals at which the shipment is to be unloaded to assure that security measures will be taken upon arrival.

§ 73.27 Notification requirements.

(a) (1) A licensee who delivers formula quantities of strategic special nuclear material to a carrier for transport shall immediately notify the consignee by telephone, telegraph, or teletype, of the time of departure of the shipment, and shall notify or confirm with the consignee the method of transportation, including the names of carriers, and the estimated time of arrival of the shipment at its destination. (2) In the case of a shipment (f.o.b.) the point where it is delivered to a carrier for transport, a licensee shall, before the shipment is delivered to the carrier, obtain written certification from the licensee who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by §§ 73.25 and 73.26 for licensed shipments have been made. When a contractor exempt from the requirements for a Commission license is the consignee of a shipment, the licensee shall, before the shipment is delivered to the carrier, obtain written certification from the contractor who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by the United States Department of Energy Manual Chapters 2401 or 2405, as appropriate, have been made. (3) A licensee who delivers formula quantities of strategic special nuclear material to a carrier for transport or releases such special nuclear material f.o.b. at the point where it is delivered to a carrier for transport shall also make arrangements with the consignee to be notified immediately by telephone and telegraph, teletype, or cable, of the arrival of the shipment at its destination or of any such shipment that is lost or unaccounted for after the estimated time of arrival at its destination.

(b) Each licensee who receives a shipment of formula quantities of strategic special nuclear material shall immediately notify by telephone and telegraph or teletype, the person who delivered the material to a carrier for transport and the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in appendix A of the arrival of the shipment at its destination. When a United States Department of Energy license-exempt contractor is the consignee, the licensee who is the consignor shall notify by telephone and telegraph, or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in appendix A of the arrival of the shipment at its destination immediately upon being notified of the receipt of the shipment by the license-exempt contractor as arranged pursuant to paragraph (a)(3) of this section. In the event such a shipment fails to arrive at its destination at the estimated time, or in the case of an export shipment, the licensee who exported the shipment, shall immediately notify by telephone and telegraph or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in appendix A of this part, and the licensee or other person who delivered the material to a carrier for transport. The licensee who made the physical protection arrangements shall also immediately notify by telephone and telegraph, or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in appendix A of the action being taken to trace the shipment.

(c) Each licensee who makes arrangements for physical protection of a shipment of formula quantities of strategic special nuclear material as required by §§ 73.25 and 73.26 shall immediately conduct a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and file a report with the Commission as specified in § 73.71. If the licensee who conducts the trace investigation is not the consignee, he shall also immediately report the results of his investigation by telephone and telegraph, or teletype to the consignee.

73.45 Performance capabilities for fixed site physical protection systems.

(a) To meet the general performance requirements of § 73.20 a fixed site physical protection system shall include the performance capabilities described in paragraphs (b) through (g) of this section unless otherwise authorized by the Commission.

(b) Prevent unauthorized access of persons and materials into material access areas and vital areas. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized access or introduce unauthorized material across material access or vital area boundaries by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons and material to material access and vital area entry control points and to delay any unauthorized penetration attempts by persons or materials sufficient to assist detection and permit a response that will prevent the penetration; and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unathorized penetration attempts by persons or materials at the time of the attempt so that a response can prevent the unauthorized access or penetration.

(2) Detect attempts to gain unauthorized access or introduce unauthorized materials into material access areas or vital areas by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for both persons and materials; and

(ii) Entry controls and procedures to verify the identity of persons and materials and assess such identity against current authorization schedules and entry criteria before permitting entry and to initiate response measures to deny unauthorized entries.

(c) Permit only authorized activities and conditions within protected areas, material access areas, and vital areas. To achieve this capability the physical protection system shall:

(1) Detect unauthorized activities or conditions within protected areas, material access areas and vital areas using the following subsystems and subfunctions:

(i) Controls and procedures that establish current schedules of authorized activities and conditions in defined areas;

(ii) Boundaries to define areas within which the authorized activities and conditions are permitted; and

(iii) Detection and surveillance subsystems and procedures to discover and assess unauthorized activities and conditions and communicate them so that response can be such as to stop the activity or correct the conditions before strategic special nuclear material is stolen or radiological sabotage committed.

(d) Permit only authorized placement and movement of strategic special nuclear material within material access areas. To achieve this capability the physical protection system shall:

(1) Detect unauthorized placement and movement of strategic special nuclear material within the material access area using the following subsystems and subfunctions:

(i) Controls and procedures to delineate authorized placement and control for strategic special nuclear material;

(ii) Controls and procedures to establish current authorized placement and movement of all strategic special

nuclear material within material access areas;

(iii) Controls and procedures to maintain knowledge of the identity, quantity, placement, and movement of all strategic special nuclear material within material access areas; and

(iv) Detection and monitoring subsystems and procedures to discover and assess unauthorized placement and movement of strategic special nuclear material and communicate them so that response can be such as to return the strategic special nuclear material to authorized placement or control.

(e) Permit removal of only authorized and confirmed forms and amounts of strategic special nuclear material from material access areas. To achieve this capability the physical protection system shall:

(1) Detect attempts at unauthorized removal of strategic special nuclear material from material access areas by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons and materials exiting a material access area to exit control points and to delay any unauthorized strategic special nuclear material removal attempts sufficient to assist detection and assessment and permit a response that will prevent the removal; and

(ii) Detection subsystems and procedures to detect, assess and communicate any attempts at unauthorized removal of strategic special nuclear material so that response to the attempt can be such as to prevent the removal.

(2) Confirm the identity and quantity of strategic special nuclear material presented for removal from a material access area and detect attempts at unauthorized removal of strategic special nuclear material from material access areas by deceit using the following subsystems and subfunctions:

(i) Authorization controls and procedures to provide current schedules for authorized removal of strategic special nuclear material which specify the authorized properties and quantities of material to be removed, the persons authorized to remove the material, and the authorized time schedule;

(ii) Removal controls and procedures to identify and confirm the properties and quantities of material being removed and verify the identity of the persons making the removal and time of removal and assess these against the current authorized removal schedule before permitting removal; and

(iii) Communications subsystems and procedures to provide for notification of an attempted unauthorized or unconfirmed removal so that response can be such as to prevent the removal.

(f) Provide for authorized access and assure detection of and response to unauthorized penetrations of the protected area to prevent theft of strategic special nuclear material and to protect against radiological sabotage. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized access or introduce unauthorized persons, vehicles, or materials into the protected area by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons, vehicles, and materials to protected area entry control points; and to delay any unauthorized penetration attempts or the introduction of unauthorized vehicles or materials sufficient to assist detection and assessment and permit a response that will prevent the penetration or prevent such penetration from resulting in theft of strategic special nuclear material or radilogical sabotage; and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized access or penetrations or such attempts by persons, vehicles, or materials at the time of the act or the attempt so that the response can be such as to prevent the unauthorized access or penetration, or prevent such penetration from resulting in theft of strategic special nuclear material or radiological sabotage.

(2) Detect attempts to gain unauthorized access or introduce unauthorized persons, vehicles, or materials into the protected area by deceit using the following subsystems and subfunctions;

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for persons, vehicles, and materials; and

(ii) Entry controls and procedures to verify the identity of persons, materials and vehicles and assess such identity against current authorization schedules before permitting entry and to initiate response measures to deny unauthorized access.

(g) Response. Each physical protection program shall provide a response capability to assure that the five capabilities described in paragraphs (b) through (f) of this section are achieved and the adversary forces will be engaged and impeded until offsite assistance forces arrive. To achieve this capability a licensee shall:

(1) Establish a security organization to:

(i) Provide trained and qualified personnel to carry out assigned duties and responsibilities; and

(ii) Provide for routine security operations and planned and predetermined response to emergencies and safeguards contingencies.

(2) Establish a predetermined plan to respond to safeguards contingency events.

(3) Provide equipment for the security organization and facility design features to:

(i) Provide for rapid assessment of safeguards contingencies;

(ii) Provide for response by assigned security organization personnel which is suffciently rapid and effective so as to achieve the predetermined objective of the response; and

(iii) Provide protection for the assessment and response personnel so that they can complete their assigned duties.

(4) Provide communications networks to:

(i) Provide rapid and accurate transmission of security information among onsite forces for routine security operation, assessment of a contingency, and response to a contingency; and

(ii) Provide rapid and accurate transmission of detection and assessment information to offsite assistance forces.

(5) Assure that a single adversary action cannot destroy the capability of the security orgainzation to notify the offsite assistance forces of the need for assistance.

§ 73.46 Fixed site physical protection systems, subsystems, elements, components, and procedures.

(a) A licensee physical protection system established pursuant to the general performance requirements of § 73.20(a)(1) and (a)(2) and the performance capability requirements of § 73.45 shall include, but are not necessarily limited to, the measures specified in paragraphs (b) through (h) of this section. The Commission may require, depending on individual facility and site conditions, alternate or additional measures deemed necessary to meet the general performance requirements of § 73.20. The Commission also may authorize protection measures other than those required by this section if, in its opinion, the overall level of performance meets the general performance requirements of § 73.20 and the performance capability requirements of § 73.45.

(b) Security Organization.

(1) The licensee shall establish a security organization including guards.

(2) The licensee shall have onsite at all time at least one full time member of the security organization with authority to direct the physical protection activities of the security organization.

(3) The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

(i) Written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen and

other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security function.

(4) The licensee shall not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B of this part "General Criteria for Security Personnel" to be published soon as an effective rule. Upon the request of an authorized respresentative of the Commission the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented.

(5) Within any given period of time, a member of the security organization may not be assigned to, or have direct operational control over, more than one of the redundant elements of a physical protection subsystem if such assignment or control could result in the loss of effectiveness of the subsystem.

(c) Physical barrier subsystems. (1) Vital equipment shall be located only within a vital area and strategic special nuclear material shall be stored or processed only in a material access area. Both vital areas and material access areas shall be located within a protected area so that access to vital equipment and to strategic special nuclear material requires passage through at least two physical barriers. More than one vital area or material access area may be located within a single protected area.

(2) The physical barriers at the perimeter of the protected area shall be separated from any other barrier designated as a physical barrier for a vital area or material access area within the protected area.

(3) Isolation zones shall be maintained in outdoor areas adjacent to the physical barrier at the perimeter of the protected area and shall be large enough to permit observation of the activities of the people on either side of that barrier in the event of its penetration. If parking facilities are provided for employees or visitors, they shall be located outside the isolation zone and exterior to the protected area.

(4) Isolation zones and all exterior areas within the protected area shall be provided with illumination sufficient for the monitoring and observation requirements of paragraphs (c)(3), (e)(8), (h)(4) and (h)(5) of this section, but not less than 0.2 footcandle measured at ground level.

(5) Strategic special nuclear material, other than alloys, fuel elements or fuel assemblies, shall:

(i) Be stored in a vault when not undergoing processing if the material can be used directly in the manufacture of a nuclear explosive device,

(ii) Be stored in penetration-resistant, tamper-indicating containers;

(iii) Be processed only in material access areas constructed with barriers that provide significant delay to penetration; and

(iv) Be kept in locked compartments or locked process equipment while undergoing processing except when personally attended.

(6) Enriched uranium scrap in the form of small pieces, cuttings, chips, solutions or in other forms which result from a manufacturing process, contained in 30 gallon or larger containers with a uranium-235 content of less than 0.25 grams per liter, may be stored within a locked and separately fenced area within a larger protected area: *Provided*, That the storage area fence is no closer than 25 feet to the perimeter of the protected area. The storage area when unoccupied shall be protected by a guard or watchmen who shall patrol at intervals not exceeding 4 hours, or by intrusion alarms.

(d) Access control subsystems and procedures. (1) A numbered picture badge identification subsystem shall be used for all individuals who are authorized access to protected areas without escort. An individual not employed by the licensee but who requires frequent and extended access to protected, material access, and vital areas may be authorized access to such areas without escort: *Provided*, That he receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area and which indicates (i) nonemployee—no escort required; (ii) areas to which access is authorized and (iii) the period for which access has been authorized. Badges shall be displayed by all individuals while inside the protected areas.

Unescorted access to vital areas, material access areas and contolled access areas shall be limited to individuals who have an NRC or DOE material access authorization,[2] who are authorized access to the material and equipment in such areas, and who require such access to perform their duties. Authorization for such individuals shall be indicated by the issuance of specially coded numbered badges indicating vital areas, material access areas, and controlled access areas to which access is authorized. No activities other than those which require access to strategic special nuclear material or equipment used in the processing, use or storage of strategic special nuclear material, shall be permitted within a material access area.

(3) The licensee shall establish and follow procedures that will identify to access control personnel those vehicles that are authorized and those materials that are not authorized entry to protected, material access, and vital areas.

(4) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals for firearms, explosives, and incendiary devices, shall be made and authorization shall be checked at such points. U.S. Department of Energy couriers engaged in the transport of special nuclear material need not be searched. Licensee employees having an NRC or U.S. Department of Energy material access authorization shall be searched at least on a random basis. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a structure, with bullet-resisting walls, doors, ceiling, floor, and windows.

(5) At the point of personnel and vehicle access into a protected area, all hand-carried packages shall be searched for firearms, explosives, and incendiary devices except those packages carried by persons having an NRC or DOE material access authorization which shall be searched on a random basis when the person carrying them is selected for search.

(6) All packages and material for delivery into the protected area shall be checked for proper identification and authorization and searched on a random basis for firearms, explosives, and incendiary devices prior to admittance into the protected area, except those Commission approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security or operational necessity.

(7) All vehicles, except U.S. Department of Energy vehicles engaged in transporting special nuclear material and emergency vehicles under emergency conditions, shall be searched for firearms, explosives, and incendiary devices prior to entry into the protect-

[2] Proposed amendments requiring an NRC material authorization program for licensee access to or control over special nuclear material (SECY-76-508) were published as a proposed rule on March 17, 1977 (42 FR 14880) and were discussed in a public hearing on July 10, 11, and 12, 1978.

ed area. Vehicle areas to be searched shall include the cab, engine compartment, undercarriage, and cargo area.

(8) All vehicles, except designated licensee vehicles, requiring entry into the protected area shall be escorted by a member of the security organization while within the protected area, and to the extent practicable shall be offloaded in an area that is not adjacent to a vital area. Designated licensee vehicles shall be limited in their use to onsite plant functions and shall remain in the protected area except for operational, maintenance, security and emergency purposes. The licensee shall exercise positive control over all such designated vehicles to assure that they are used only by authorized persons and for authorized purposes.

(9) The licensee shall control all points of personnel and vehicle access to material access areas, vital areas and controlled access areas. Identification of personnel and vehicles shall be made and authorization checked at such points. Prior to entry into a material access area, packages shall be searched for firearms, explosives, and incendiary devices. All vehicles, materials and packages, including trash, wastes, tools and equipment exiting from a material access area shall be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area. Each individual exiting a material access area shall undergo at least two separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

(10) Before exiting from a material access area, containers of contaminated wastes shall be drum scanned and tamper sealed by at least two individuals, working and recording as a team, who do not have access to material processing and storage areas.

(11) Strategic special nuclear material being prepared for shipment offsite, including product, samples and scrap, shall be packed and placed in sealed containers in the presence of at least two individuals working as a team who shall verify and certify the content of each shipping container through the witnessing of gross weight measurements and nondestructive assay, and through the inspection of tamper seal integrity and associated seal records.

(12) Areas used for preparing strategic special nuclear material for shipment and areas used for packaging and screening trash and wastes shall be controlled access areas and shall be separated from processing and storage areas.

(13) Individuals not permitted by the licensee to enter protected areas without escort shall be escorted by a watchman, or other individual designated by the licensee, while in a protected area and shall be badged to indicate that an escort is required. In addition, the individual shall be required to register his name, date, time, purpose of visit and employment affiliation, citizenship, and name of the individual to be visited.

(14) All keys, locks, combinations and related equipment used to control access to protected, material access, vital, and controlled access areas shall be controlled to reduce the probability of compromise. Whenever there is evidence that a key, lock, combination, or related equipment may have been compromised it shall be changed. Upon termination of employment of any employee, keys, locks, combinations, and related equipment to which that employee had access, shall be changed.

(e) Detection, surveillance and alarm subsystems and procedures. (1) The licensee shall provide an intrusion alarm subsystem with a capability to detect penetration through the isolation zone and to permit response action.

(2) All emergency exits in each protected, material access, and vital area shall be locked to prevent entry from the outside and alarmed to provide local visible and audible alarm annunciation.

(3) All unoccupied vital areas and material access areas shall be locked and protected by an intrusion alarm subsystem which will alarm upon the entry of a person anywhere into the area, upon exit from the area, and upon movement of an individual within the area, except that for process material access areas only the location of the strategic special nuclear material within the area is required to be so alarmed. Vaults and process areas that contain strategic special nuclear material that has not been alloyed or encapsulated shall also be under the surveillance of closed circuit television that is monitored in both alarm stations and at least one other continously manned onsite location

(4) All manned access control points in the protected area barrier, all security patrols and guard stations within the protected area, and both alarm stations shall be provided with duress alarms.

(5) All alarms required pursuant to this section shall annunciate in a continuously manned central alarm station located within the protected area and in at least one other independent continuously manned onsite station not necessarily within the protected area, so that a single act cannot remove the capability of calling for assistance or responding to an alarm. The alarm stations shall be controlled access areas and their walls, doors, ceiling, floor, and windows shall be bullet-resisting. The central alarm station shall be located within a building so that the interior of the central alarm station is not visible from the perimeter of the protected area. This station may not contain any operational activities that would interfere with the execution of the alarm response function.

(6) All alarms required by this section shall remain operable from independent power sources in the event of the loss of normal power. Switchover to standby power shall be automatic and shall not cause false alarms on annunciator modules.

(7) All alarm devices including transmission lines to annunciators shall be tamper indicating and self-checking e.g., an automatic indication is provided when a failure of the alarm system or a component occurs, when there is an attempt to compromise the system, or when the system is on standby power. The annunciation of an alarm at the alarm stations shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. The status of all alarms and alarm zones shall be indicated in the alarm stations.

(8) All exterior areas within the protected area shall be monitored or periodically checked to detect the presence of unauthorized persons, vehicles, materials, or unauthorized activities.

(9) Methods to observe individuals within material access areas to assure that strategic special nuclear material is not moved to unauthorized locations or in an unauthorized manner shall be provided and used on a continuing basis.

(f) Communication subsystems. (1) Each guard, watchman, or armed response individual on duty shall be capable of maintaining continous communication with an individual in each continuously manned alarm station required by paragraph (e)(5) of this section, who shall be capable of calling for assistance from other guards, watchmen, and armed response personnel and from law enforcement authorities.

(2) Each alarm station required by paragraph (e)(5) of this section shall have both conventional telephone service and radio or microwave transmitted two-way voice communication, either directly or through an intermediary, for the capability of communication with the law enforcement authorities.

(3) Nonportable communications equipment controlled by the licensee and required by this section shall remain operable from independent

power sources in the event of the loss of normal power.

(g) Test and maintenance programs. The licensee shall have a test and maintenance program for intrusion alarms, emergency exit alarms, communications equipment, physical barriers, and other physical protection related devices and equipment used pursuant to this section that shall provide for the following:

(1) Tests and inspections during the installation and construction of physical protection related subsystems and components to assure that they comply with their respective design criteria and performance specifications.

(2) Preoperational tests and inspections of physical protection related subsystems and components to demonstrate their effectiveness and availability with respect to their respective design criteria and performance specifications.

(3) Operational tests and inspections of physical protection related subsystems and components to assure their maintenance in an operable and effective condition, including:

(i) Testing of each intrusion alarm at the beginning and end of any period that it is used. If the period of continous use is longer than 7 days, the intrusion alarm shall also be tested at least once every 7 days.

(ii) Testing of communications equipment required for communications onsite, including duress alarms, for performance not less frequently than once at the beginning of each security personnel work shift. Communications equipment required for communications offsite shall be tested for performance not less than once a day.

(4) Preventive maintenance programs shall be established for physical protection related subsystems and components to assure their continued maintenance in an operable and effective condition.

(5) All physical protection related subsystems and components shall be maintained in operable condition. The licensee shall develop and employ corrective action procedures and compensatory measures to assure that the effectiveness of the physical protection system is not reduced by failure or other contingencies affecting the operation of the security related equipment or structures. Repairs and maintenance shall be performed by at least two individuals working as a team who have been trained in the operation and performance of the equipment. The security organization shall be notified before and after service is performed and shall conduct performance verification tests after the service has been completed.

(6) The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review, audit, and evaluation along with recommendations, corrections and for improvements, if any, shall be doc- umented, reported to the licensee's plant management, and to corporate management at least one level higher than that having responsibility for the day to day plant operations. The reports shall be kept available at the plant for inspection for a period of 5 years.

(h) Contingency and response plans and procedures.

(1) The licensee shall have a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans shall be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans" (43 FR 11962). Contingency plans shall include, but not be limited to, the response requirements in paragraphs (h)(2) through (h)(5) of this section.

(2) The licensee shall establish and document response arrangments that have been made with local law enforcement authorities.

(3) A minimum of five (5) guards shall be available at the facility to fulfill assessment and response requirements. In addition a force of guards or armed response personnel also shall be available to provide assistance as necessary. The size and availability of the additional force shall be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to engage and impede the adversary force until offsite assistance arrives. The reason for determining the total number and availability of onsite armed response personnel shall be included in the physical protection plans submitted to the Commission for approval.

(4) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, a material access area, or a vital area, or upon evidence or indication of intrusion into a protected area, a material access area, or a vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responding guards or other armed response personnel to interpose themselves between vital areas and material access areas and any adversary attempting entry for purposes of radiological sabotage or theft of strategic special nuclear material and to intercept any person exiting with special nuclear material, and

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(5) The licensee shall instruct every guard or other armed response personnel to prevent or impede acts of radiological sabotage or theft of strategic special nuclear material by using force sufficient to counter the force directed at him, including the use of deadly force when the guards or other armed response personnel have a reasonable belief that it is necessary in self-defense or in the defense of others.

(6) To facilitate initial response to detection of penetration of the protected area and assessment of the existence of a threat, a capability of observing the isolation zones and the physical barrier at the perimeter of the protected area shall be provided, preferably by means of closed circuit television or by other suitable means which limit exposure of responding personnel to possible attack.

(7) Alarms occuring within unoccupied vaults and unoccupied material access areas containing unalloyed or unencapsulated strategic special nuclear material shall be assessed by at least two security personnel using closed circuit television (CCTV) or other remote means.

(8) Alarms occurring within unoccupied material access areas that contain only alloyed or encapsulated strategic special nuclear material shall be assessed as in paragraph (i) above or by at least two security personnel who shall undergo a search before exiting the material access area.

11. Section 73.55 is amended to change the term "industrial sabotage" to "radiological sabotage" wherever it appears.

12. Section 73.55(b) is revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) Physical security organization. (1) The licensee shall establish a security organization, including guards, to protect his facility against radiological sabotage.

(2) At least one full-time member of the security organization who has the authority to direct the physical pro-

tection activities of the security organization shall be onsite at all times.

(3) The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

(i) Written security procedures which document the structure of the security organization and which detail and duties of guards, watchmen and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security functions.

(4) The licensee shall not permit an individual to act as a guard, watchman or armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with appendix B, of this part "General Criteria for Security Personnel" to be published soon as an effective rule. Upon the request of an authorized representative of the Commission the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with appendix B of this part at least every 12 months. Such requalification shall be documented. By (300 days after the rule becomes effective) each licensee shall submit a training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to assure these individuals meet the requirements of this paragraph. The training and qualifications plan shall include a schedule to show how all security personnel will be qualified by (within 2 years after the rule becomes effective) or within 2 years after the submitted plan is approved, whichever is later. The training and qualifications plan shall be followed by the licensee after (500 days after the rule becomes effective) or 60 days after the submitted plan is approved by the NRC, whichever is later.

* * * * *

13. Section 73.55(g) is amended to add a new subparagraph (4) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(g) Testing and Maintenance. * * *

(4) The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program and an audit of commitments established for response by local law enforcement authorities. The results of the review audit and evaluation along with recommendations for corrections and improvements, if any, shall be documented, reported to the licensee's plant managment and to corporate management at least one level higher than that having responsibility for the day to day plant operation. The reports shall be kept available at the plant for inspection for a period of 5 years.

* * * * *

14. Section 73.55(h) is amended to renumber paragraph (h)(5) as (h)(6) and revise paragraph h(4) as paragraphs (h) (4) and (5) as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(h) Response requirement. * * *

(4) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, a material access area, or a vital area; or upon evidence or indication of intrusion into a protected area, material access area, or vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responsing guards to interpose themselves between material access areas and vital areas and any adversary attempting entry for the purpose of theft of special nuclear material or industrial sabotage and to intercept any person exiting with special nuclear material, and,

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(5) The licensee shall instruct every guard to prevent or impede attempted acts of theft or industrial sabotage by using force sufficient to counter the force directed at him including deadly force when the guard has a reasonable belief it is necessary in self-defense or in the defense of others.

* * * * *

15. The prefatory language of § 73.70 and § 73.70 (c) and (g) is revised to read as follows:

§ 73.70 Records.

Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, and/or 73.45, 73.46, and/or § 73.55 shall keep the following records:

* * * * *

(c) A register of visitors, vendors, and other individuals not employed by the licensee pursuant to §§ 73.46(d)(10) and 73.55(d)(6).

* * * * *

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.25, 73.26 and 73.27. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and other shall also be recorded.

* * * * *

§ 73.71 [Amended]

16. Section 73.71(a) is amended to change the reference to § 73.36(f) to reference § 73.27(c).

§ 70.22 [Amended]

17. Section 70.22(g) is amended to replace reference "* * * §§ 73.30 through 73.36 * * *" with reference to part 73.

§ 70.32 [Amended]

18. Section 70.32(d) is amended to replace the reference to § 73.30(e) with reference to part 73.

19. Section 70.32(e) is amended to replace the reference to paragraph (f) with reference to part 73.

20. Section 70.32(f) is deleted.

(Sec. 161i, Pub. L. 83-703, 68 Stat. 948; secs. 201, 204(b)(1), Pub. L. 93-438, 88 Stat. 1243, 1245 (42 U.S.C. 2201, 5841, 5844).)

Dated at Washington, D.C. this 1st day of August, 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-21791 Filed 8-8-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 782 3057]

MARATHON OIL CO.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Findlay, Ohio producer and retailer of petroleum products to cease instituting, or authorizing the institution of debt collection suits in forums other than in which consumer resided or signed the credit contract. The firm would further be required to terminate suits pending in distant counties; vacate resulting default judgments; and provide consumers and credit reporting agencies with notice of such suit termination.

DATE: Comments must be received on or before October 6, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul R. Peterson, Regional Director, Cleveland Regional Office, Federal Trade Commission, Suite 500, Mall Building, 118 Saint Clair Avenue, Cleveland, Ohio 44114. 216-522-4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at it's principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

MARATHON OIL CO.

[File No. 782-3057]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Marathon Oil Co., a corporation, and it now appearing that Marathon Oil Co., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Marathon Oil Co., by its duly authorized officer, and its attorney, and counsel for the Federal trade Commission that:

1. Proposed respondent Marathon Oil Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 539 South Main Street, in the city of Findlay, State of Ohio 45840.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the official record of the proceding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agree-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

For purposes of this order, the following term shall apply:

"Suits in a distant forum" shall mean retail credit collection suits, other than suits to enforce an interest in real property securing the consumer's obligation, instituted in a judicial district or similar legal entity other than the one in which the consumer signed the contract sued upon or resides at the commencement of the action.

II

It is ordered, That proposed respondent, Marathon Oil Co., a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from instituting, or authorizing the institution of, suits in a distant forum.

III

It is further ordered, That, as to any suit in a distant forum instituted by or on behalf of proposed respondent pending at the time this order is served or instituted subsequent to the date on which this order is served, such suit shall be terminated and any default judgment entered thereunder vacated forthwith. For such suits instituted prior to the date on which this order is served, "pending" shall mean any suits not reduced to judgment. In all such cases, clear notice shall be provided to the defendants to these actions, to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. Section 603) which proposed respondent knows or has reason to know recorded the suit or judgment in its files, and to any other person or organization upon request of the defendant.

IV

It is further ordered, That proposed respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions dealing with consumer

credit and to each agency with whom proposed respondent currently places its retail credit accounts for collection, and to any other agency prior to referral of proposed respondent's retail credit accounts for collection. Proposed respondent shall obtain and preserve for two (2) years after it terminates its business relationship with any agency with regard to the collection of retail credit accounts, a signed and dated statement from each agency acknowledging receipt of the order and willingness to comply with it.

V

It is further ordered, That proposed respondent notify the Commission at least 30 days prior to any proposed change jin the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of the order.

It is further ordered, That proposed respondent shall, within sixty (60) days and at the end of six (6) months after service upon it of this order, file with the Commission a report, in writing, signed by proposed respondent setting forth in detail the manner and form of its compliance with this order.

MARATHON OIL COMPANY

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Marathon Oil Co.

The proposed consent order and material submitted by Marathon that is reasonably related to the merits of the order and is not exempt from disclosure under the Freedom of Information Act have been placed on the public record for sixth (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it will withdraw from the agreement or make final the agreement's proposed order.

Marathon Oil Co. is an Ohio corporation which engages in the production and sale of petroleum products. The complaint alleges that Marathon, in attempting to collect allegedly delinquent retail credit accounts, sued consumers in counties other than where the consumers lived or signed the credit contracts. As a result, the cost and inconvenience to consumers of defending the suits effectively deprived some of them of the opportunity to defend themselves.

The consent order in this matter prohibits Marathon from instituting or authorizing the institution of retail credit collection suits in counties other than where the defendant resides or signed the credit contract. Pending suits and any suits initiated in the future outside those counties must be terminated as soon as possible.

The consent order also requires Marathon to give notice to the consumer, credit reporting agencies, and other parties if suits in these distant counties occur in the future. In addition, the order requires the respondent to obtain a statement from any collection agent that it is willing to comply with the terms of this order. Finally, the order requires Marathon to file reports with the Commission setting forth the manner and form in which it has complied with the order.

The order is designed to prevent Marathon's retail credit customers from being sued in a county far from their homes or where they signed the credit contract. Thus, the order will help insure that consumers have a practical opportunity to defend themselves.

The purposes of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-22165 Filed 8-8-78; 8:45 am]

[6750-01]

[16 CFR Part 13]

[File No. 782 3037]

NATIONAL INDEMNITY CO., ET AL.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trde Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair or deceptive acts or practices, this provisionally accepted consent agreement, among other things, would require an Omaha, Nebr., insurance company and its subsidiaries to cease failing to provide insurance applicants with required disclosures regarding preparation of investigative consumer reports, and the nature and scope of such investigations.

DATE: Comments must be received on or before October 6, 1978.

ADDRESS: Comments should be directed to Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Lewis H. Goldfarb, Assistant Director, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-724-1139.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

NATIONAL INDEMNITY COMPANY

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of the National Indemnity Co., a corporation, and its subsidiaries: Cornhusker Casualty Co., Home & Automobile Insurance Co., Lakeland Fire & Casualty Co., Texas United Insurance Co., Insurance Co. of Iowa, and Kansas Fire & Casualty Co. and it now appearing that the National Indemnity Co., a corporation, and its abovenamed subsidiaries, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing consent order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between the National Indemnity Co. by its duly authorized officers and their attorneys, the abovenamed subsidiaries by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent National Indemnity Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 3024 Harney Street, Omaha, Nebr. 68131.

Respondent Cornhusker Casualty Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 105 North 31st Avenue, Omaha, Nebr. 68131.

Respondent Home & Automobile Insurance Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 101 South Wacker Drive, Chicago, Ill. 60606.

Respondent Lakeland Fire & Casualty Co. is a corporation organized, existing, and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 6700 France Avenue South, Minneapolis, Minn. 55435.

Respondent Texas United Insurance Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4415 Piedras Drive West, San Antonio, Tex. 78228.

Respondent Insurance Co. of Iowa is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business located at Box 130, Des Moines, Iowa 50265.

Respondent Kansas Fire & Casualty Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas with its principal office

and place of business located at 400 Kansas Avenue, Suite 211, Topeka, Kans. 66603.

Respondent National Indemnity Co. has the authority to control the acts and practices of its subsidiaries, as described herein.

2. Proposed respondents admit all jurisdictional facts set forth in the draft complaint here attached:

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) A requirement that the Commission decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed in the public record for a period of 60 days and information in respect thereto publicly released. Thereafter, the Commission may withdraw its acceptance and so notify the other parties if comments or veiws submitted to the Commission within the aforesaid sixty (60) day period disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make public information in respect thereto. When so entered the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified, or set aside in the same manner and in the same time period provided by statute for other orders. The order shall become final upon service. The mailing of the complaint and decision containing the agreed to order to the proposed respondents as stated in the agreement shall constitute service. Proposed respondents waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby and they understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order and that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondents, National Indemnity Co., a corporation, and its subsidiaries: Cornhusker Casualty Co., Home & Automobile Insurance Co., Lakeland Fire & Casualty Co., Texas United Insurance Co., Insurance Co. of Iowa, and Kansas Fire & Casualty Co., their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with either the request for or the receipt or consideration of any "investigative consumer report," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(e) (1970)), do forthwith cease and desist from:

(1) Failing, whenever respondents procure or cause to be prepared an investigative consumer report, to clearly and accurately disclose to the consumer that:

(A) An "investigative consumer report" may be made in connection with the application, including information regarding the consumer's character, general reputation, personal characteristics, or mode of living;

(B) The information contained in the report will be obtained through personal interviews with neighbors, friends, or associates of the consumer, or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information; and,

(C) The consumer has the right to request, within a reasonable period of time, a complete and accurate disclosure of the nature and scope of the investigative report, and that upon such request respondents shall make such disclosure in writing mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for such disclosure was received from the consumer or the investigative report was first requested, whichever is later.

(2) Failing, whenever an applicant requests additional information concerning an investigative consumer report to furnish the consumer with a complete and accurate disclosure of the nature and scope of the investigation requested including:

(A) The name and address of the consumer reporting agency which prepared the investigative report; and,

(B) A detailed written summary of the areas investigated and the types of questions asked which includes a description of all the information covered by the interview forms typically used to prepare the investigative consumer report. In lieu of a written summary, respondents may satisfy the requirements of this subsection by providing the consumer with a blank copy of any standardized form used to transmit information from the consumer reporting agency to the user, to the extent to which these forms itemize with specificity the questions to be asked and the areas to be investigated; and,

(C) If the investigative consumer report has been completed at the time the consumer makes his requests, the number and type of persons interviewed, if known, or, if not known, the usual number and type of persons interviewed. If the report has not been completed at the time of the request, the minimum number and type of persons normally interviewed in connection with such a report.

It is further ordered, That respondents shall preserve evidence of compliance with the requirements imposed under this order for a period of not less than 2 years after the date each required disclosure is made. Respondents shall upon request permit the Commission through its duly authorized representatives to inspect such records.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third-party information in connection with applications for insurance to be used for personal, family, or household purposes.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondents herein shall within sixty (60) days after service upon them of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

NATIONAL INDEMNITY CO.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from the National Indemnity Co., 3024 Harney Street, Omaha, Nebr. 68131, and its subsidiaries: Cornhusker Casualty Co., Home & Automobile Insurance Co., Lakeland Fire & Casualty Co., Texas United Insurance Co., Insurance Co. of Iowa, and Kansas Fire & Casualty Co.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order. The agreement states that it is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

The complaint which led to the proposed order to cease and desist alleged that the proposed respondents had violated two sections of the Fair Credit Reporting Act dealing with notices to be sent to consumers when an investigative consumer report is prepared in connection with their applications for insurance. An investigative consumer report contains information concerning a consumer's character, general reputation, personal characteristics, or mode of living which is obtained from personal interviews with the consumer's neighbors, friends, or associates.

Section 606(a) of the Fair Credit Reporting Act provides that a person may not procure or cause to be prepared an investigative report unless certain disclosures are made to the consumer. The complaint alleged that the proposed respondents had failed to make these disclosures which inform consumers that: (1) An "investigative consumer report" may be prepared in connection with their applications for insurance; (2) information contained in the report may be obtained through personal interviews with neighbors, friends, or others with whom the

consumer is acquainted; (3) upon written request, a complete and accurate disclosure of the nature and scope of the investigative report will be provided.

Section 606(b) of the Fair Credit Reporting Act provides that the consumer, upon request, must receive a complete and accurate disclosure of the nature and scope of the investigation. The complaint alleged that the proposed respondents did not comply with the requirements of this section because they failed to inform consumers of the name and address of the consumer reporting agency which prepared the report; the type of questions asked; and the number and types of persons interviewed.

The consent order requires the companies to cease and desist from failing to make the disclosures alleged in the complaint. The consent order also requires the companies to deliver a copy of the order to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for insurance to be used for personal, family, or household purposes.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in anyway their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-22189 Filed 8-8-78; 8:45 am]

[6750-01]

[16 CFR Part 439]

CELLULAR PLASTICS PRODUCTS

Disclosure of Combustion Characteristics in Marketing and Certification

AGENCY: Federal Trade Commission.

ACTION: Amended initial notice of rulemaking for proposed trade regulation rule.

SUMMARY: On July 23, 1975, the Commission published an initial notice commencing a proceeding for the promulgation of a trade regulation rule that would require full disclosure of the combustion characteristics of cellular plastics products and assure that consumers are provided with safe installation instructions for these products.

The following amended initial notice incorporates the proposal for a trade regulation rule published on July 23, 1975. The Commission requests written comments on the current need to continue the trade regulation rule proceeding on this subject matter at this time. Comment also is solicited on a separate series of additional questions regarding the regulatory scheme contemplated by the proposed rule.

Through this notice the Commission also is apprising interested parties of its deliberations regarding a proposal by the Society of the Plastics Industry, Inc., a trade association, and several manufacturers of cellular plastics products. These interested parties proposed that the Commission accept a conditional stipulation in lieu of their full participation in the rulemaking hearings. The Commission has rejected that proposal.

DATES: Written comments in response to part I of the questions for comment shall be accepted until October 10, 1978. Written comments in response to part II of the Questions for comment shall be accepted until 45 days prior to commencement of any rulemaking hearings held.

ADDRESS: Written comments should be addressed to the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Kent C. Howerton, 202-724-1514, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On July 23, 1975, the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. section 41, et seq., the provisions of part I subpart B of the Commission's procedures and rules of practice, 16 CFR 1.7, et seq., and section 553 of subchapter II, chapter 5, title 5 of the U.S. Code (Administrative Procedure), published an "initial notice" (40 FR 30842) initiating a proceeding for the promulgation of a trade regulation rule (hereinafter referred to as the proposed rule) concerning the "Disclosure of Combustion Characteristics in the Marketing and Certification of Cellular Plastics Products".

Cellular plastics products are fefined in the proposed rule as cellular plastics materials used in the construction of structures and, for certain purposes, used in the manufacture of furniture. The requirements of the proposed rule are intended to remedy abuses in the dissemination of marketing representations regarding the combustion characteristics of such products. In the past, these representations have not fully disclosed the performance of these products under actual fire conditions. The Commission's reason for proposing this rule is more fully set forth in its "initial notice" of July 23, 1975, under the heading "Statement of Reason for the Proposed Rule".

A notice of rulemaking originally was published on August 6, 1974 (39 FR 28292). Following amendments to the Federal Trade Commission Act, an "initial notice" was published on July 23, 1975 (40 FR 30842). Certain corrections to the latter notice were published on August 4, 1975 (40 FR 32764).

In June 1976, the Society of the Plastics Industry, Inc., a trade association, and a number of plastics manufacturers proposed a conditional stipulation predicated on an alternative trade regulation rule that differed in several respects from the proposed rule published on July 23, 1975. Under the terms of the proffered stipulation, the industry signators would have withdrawn their requests for the designation of disputed issues of fact and waived all further rights to offer direct testimony or to challenge the validity of the alternative rule before the Commission or in court. While the stipulation would not have required the Commission to promulgate this alternative rule, the Commission would have been required to conduct further hearings with all previously waived rights of participation and comment restored if it ultimately determined not to enact the rule in the stipulated form.

After weighing the legal and policy considerations involved, the Commission determined that the proposed stipulation procedure was not appropriate in this proceeding and that a full rulemaking record should be developed in this matter. The Commission, however, acknowledges that the alternative rule raises several substantive areas for supplemental questions which focus on these matters in order to elicit on the record a full discussion of the arguments supporting the amendment proposed by the industry, and to provide all interested parties an opportunity to comment on these issues.

The Commission also is concerned that during the period since publication of initial notice in this proceeding there may have been changes in the circumstances which prompted issuance of the proposed trade regulation rule. In particular, the Commission is interested in the extent to which cellular plastics products have had a significant involvement in fires since 1973, whether marketing representations and other practices which would be covered by the proposed trade regulation rule have changed, and the extent to which individual and commercial users of these products may already be protected from unreasonable combustion hazards (e.g., by current building code requirements, other Federal, state or local regulations and private product liability litigation, or any other relevant developments). The Commission will consider comments on this inquiry and will determine whether or not further rulemaking proceedings are warranted at that time. Therefore, the Commission strongly solicits written public comment on whether or not intervening

circumstances have eliminated the need for the Federal Trade Commission to continue the trade regulation rule proceeding at this time. To facilitate consideration of this inquiry (listed as part I under the heading "Questions For Comment"), such comments should be identified separately from comments in response to part II of the "Questions For Comment".

All comments should be identified as a "Cellular Plastics Rule Comment" and should be submitted, when feasible and not burdensome, with five copies.

In order to expedite this proceeding, the opportunity to submit written comments in response to part I will end at the expiration of this final 60-day period.

A final notice delineating a schedule for public hearings will be published following the period for submitting these additional comments if the Commission determines that the public interest warrants a continuation of this rulemaking proceeding.

Questions For Comment

PART I

Is there currently a need for a trade regulation rule requiring that marketers of cellular plastics products: (1) Evaluate such products on the basis of competent scientific tests which determine, evaluate, predict or describe the combustion characteristics of the products under actual fire conditions in their end uses; (2) base any noncombustibility or comparative combustibility claims on such tests; (3) disclose any unreasonable combustion hazards associated with the use of the products under actual fire conditions in their end uses and the need to follow installation instructions to minimize those hazards; and (4) provide recommended end use and installation instructions to minimize any unreasonable combustion hazards? Responses should include specific discussion of the following questions, supported by relevant data:

1. Have cellular plastics products had a significant involvement in fires since 1973?

2. Have marketing representations and other practices which would be covered by the proposed trade regulation rule changed?

3. Are individual and commercial users of these products already protected from unreasonable combustion hazards (e.g., by current building code requirements or other regulations, by private product liability litigation, by safe end-use installation instructions or by proper installation)?

PART II

1. Should the rule define interior and exterior trim separate from the broad definition of "cellular plastics product"? If so, how should each of these trim products be defined? What justification is there to exclude interior or exterior trim from coverage of part or all of the requirements of the rule?

2. How should the term "structure" be defined for purposes of determining the scope of its coverage under the rule?

3. What tests are currently available to test for the toxicity of cellular plastics products under "actual fire conditions"? What would the impact be of requiring toxicity testing?

4. Should the requirement that a marketer or certifier test cellular plastics products under "actual fire conditions" extend to all reasonably foreseeable end uses of such products or only to those end uses recommended by the marketer when such products are installed according to the marketer's instructions?

5. Should the responsibility for testing be different for a "marketer" than for a "certifier" (i.e., one engaged solely in certification of a product's performance in a specific test)?

If so, would it be sufficient for a certifier to give as a warning the following statement:

CAUTION: [This/These] rating[s] alone [does/do] not define the hazards presented by [this material/products made from this material] under actual fire conditions. The marketers of this product advise that it is combustible, may constitute a fire hazard if improperly used or installed and should only be used as directed by the specific instructions accompanying the product.

6. Should limitations be imposed on representations regarding the flame-retardant content of cellular plastics products?

7. Should marketers be permitted to rely upon tests conducted by others to fulfill the substantiation requirements of the rule?

8. For cellular plastics products in storage or during construction, should a marketer be allowed to disclose a product's ignition temperature or that it will not ignite when exposed to burning cigarettes, matches and other small ignition sources, if that representation is true?

If so, would it be sufficient for a marketer to give as a warning the following statement:

WARNING: This information relates to ignition properties of the product only [while in storage and/or during construction]. It does not reflect fire hazards of the product after ignition has commenced in its recommended end use[s].

9. Does the rule assure that the ultimate consumers of cellular plastics products, including homeowners installing cellular plastics products such as insulation by themselves or contracting for the installation of cellular plastics products by professional applicators, receive full disclosure regarding the safety and end-use limitations of these products prior to purchase? If not, what further provisions would be necessary in the rule to accomplish that purpose?

10. Are the warning statements in the proposed rule and those suggested in these questions sufficiently clear and easily understood? If not, how could they be worded more clearly?

Text of Proposed Trade Regulation Rule

§ 439.1 Definitions.

(a) *Cellular plastics product.* Means cellular plastics material (as hereinafter defined) which is used in the construction of structures and, for the purpose of § 439.2(b) only, which is used in the manufacture of furniture. Cellular or foamed plastic material means a heterogeneous system comprised of at least two phases, one of which is a continuous polymeric organic material, and a second of which is deliberately introduced for the purpose of distributing a gas in voids throughout the material, thus achieving a reduction in mass per unit volume to less than 95 percent of the density of the unfoamed polymeric organic material. For purposes of § 439.2 (a) and (b), only, cellular plastics material shall include foamed and unfoamed polymeric or monomeric precursors (pre-polymer, if used) of cellular plastics products and flame retardants, when sold for use in cellular plastics products. Cellular plastics material shall not include plasticizers, fillers, extenders, catalysts, blowing agents, colorants, stabilizers, lubricants, surfactants, pigments, reaction control agents or processing aids. Cellular plastics product shall not include flooring, flooring underlay, carpeting, carpet underlay or synthetic grass underlay.

(b) *Structure.* Means a building designed for industrial, commercial, agricultural, institutional or residential occupancy, or other similar enclosure such as a storage tank or mine.

(c) *Combustion characteristics.* Means flammability, ease of ignition; flame spread, flashover, rate of heat release, total heat released, fuel contribution, and the products of combustion, including, but not limited to smoke development and release of gaseous products.

(d) *Marketing.* Means sale, offering for sale, advertising, promotion or distribution, and the inducement of specification, purchase or use, or the inducement of adoption or acceptance under building codes. This definition shall apply whether the form of offer, advertisement, promotion or inducement is oral, visual or written.

(e) *Standard.* Means any prescribed set of conditions or requirements applicable to any product in any market, whether established by governmental authority, private organization or by agreement or custom. The term includes, but is not limited to definitions; methods of test; specifications for performance, design, construction, or composition; classification; guidelines, codes and recommended practices.

(f) *Certification.* Means seals, statements of approval, labels, listings, endorsements or other forms of approval, or other indications that a product complies with or performs satisfactorily in relation to a standard.

(g) *Clearly and conspicuously.* Means that the overall effect of a statement or disclosure be reasonably calculated to give notice to prospective purchasers or users prior to purchase and use. Important elements of such notice include, but are not limited to the context of such disclosure, color, graphics, type size and placement.

(h) *Actual fire conditions.* Means the fire conditions to which one could reasonably expect a particular product to be subjected, including the expected quantity, configuration and spatial arrangement of materials and material assemblages, and ignition sources.

(i) *Nonprofessional applicator.* Means a person who does not regularly purchase or utilize cellular plastics products.

§ 439.2 The rule.

In connection with the marketing of cellular plastic products, and in connection with the certification of cellular plastics products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice within the meaning of section 5 of that Act:

(a) (1) To refer directly or indirectly to any standard or certification or make any representation which deals in any manner with a combustion characteristic of a cellular plastics product unless such standard, certification, or representation is substantiated by a reasonable basis, which shall include competent scientific test(s) which determine, evaluate, predict or describe said combustion characteristic under actual fire conditions to the extent that such tests are recognized as probative given the then existing state of the art, and may include, but shall not be limited to, empirical data which document the performance of the product in actual fire conditions.

(2) This paragraph shall not prohibit references or representations required for compliance with Federal statutes or Federal regulation of a particular cellular plastics product for a specific end use, but such reference may be made only in connection with the marketing of the particular product for the specific end use covered by such statute or regulation.

(3) A representation that a product contains flame retardants, without more, shall not be deemed to violate this section if such is the fact.

NOTE 1.—The Commission recognizes that although certain standards or certifications presently exist which do not satisfy the substantiation standard, these standards or certification may be useful for purposes unrelated to describing combustion characteristics, such as control of product uniformity, or quality. Nevertheless, because of the potential for abuse of the results of limited purpose testing, the Commission requires, without exception, compliance with the test of "reasonable basis * * * under actual fire conditions" in the marketing or certification of cellular plastics products.

NOTE 2.—Reference to the following standards is impermissible at the present. This list is not considered to be exhaustive. However, future reference to a standard may be permitted if the standard is determined to meet or is modified to meet the substantiation standard of this section.

(1) Test for flammability of plastics sheeting and cellular plastics, variously denoted as: ASTM D1692; ANS K65.114; UL 94;

(2) Test for flammability of self-supporting plastics, variously denoted as: ASTM D635; ANS K65.21;

(3) Test for surface flammability of building materials using an 8-foot (2.44-m) tunnel furnace, denoted as: ASTM E286.

NOTE 3.—The Commission considers that neither the standard entitled "Standard Method of Test for Surface Burning Characteristics of Building Materials", variously denoted as ASTM E-84, UL 723, NFPA 255 and ANS 2.5, nor the standard entitled "Standard Method of Test for Surface Flammability of Materials Using a Radiant Heat Energy Source", denoted as ASTM E-162, alone constitutes a "reasonable basis * * * under actual fire conditions" as required by this section. However, the Commission recognizes that reference to these standards is often necessary to obtain building code approval for a number of end uses of cellular plastics products. The Commission does not wish to eliminate products from the regulated building market where other substantiation exists for the product in its recommended end use.

Therefore, the Commission will permit reference to these standards where the cellular plastics product, in its recommended end use(s), does not pose a combustion hazard with respect to the combustion characteristic(s) measured by those standards under actual fire conditions, and that fact is substantiated as required by this section. *Provided,* Any reference to these standards must clearly and conspicuously disclose the following statement:

CAUTION: This numerical (flame spread and/or smoke density and/or fuel contribution) (rating/index) (does/do) not define the hazard presented by this material (or products made from this material) under actual fire conditions. (NOTE.—Insert appropriate word or phrase in text of statement.)

NOTE 4.—"Recognized as probative" does not necessarily imply formal adoption or acceptance by standards organizations, certifiers, government organizations or similar entities.

NOTE 5.—Section 439.2(a) requires a marketer to conduct only such variety and number of tests sufficient to establish a reasonable basis for a reference or representation; this section does not require that a product be subjected to every test which may be available to support a reference or representation.

(b) To use, directly or indirectly, such terminology as: "nonburning", "self-extinguishing", "slow burning", "noncombustible", "SE", "SB", "NB", "FR", or any term, expression or proprietary language which purports to describe or might be construed to describe any combustion characteristic, unless such terminology reflects the performance of the product under actual fire conditions and is substantiated by a reasonable basis pursuant to § 439.2(a).

NOTE.—Included with this section are arbitrary or fanciful words, symbols or depictions, such as trademarks, that might have acquired a secondary meaning similar to the representations prohibited by this section.

(c) To fail to evaluate any cellular plastics product on the basis of competent scientific tests, as defined in § 439.2(a), to the extent that such tests are available, and to fully and accurately disclose (1) any unreasonable combustion hazards associated with the use of the product under actual fire conditions in reasonably foreseeable end uses, and (2) the need to follow instructions, required to be furnished pursuant to § 439.2(d), to minimize the hazards indicated by such evaluation. The disclosure requirement may be met by use of the following statement:

Warning! This product is flammable and may constitute a fire hazard if improperly used or installed. It should not be left exposed or inadequately protected. Consult specific instructions for use accompanying this product.

Any disclosure required by this paragraph shall appear clearly and conspicuously (1) on all advertisements (other than advertisements which disclose only the product name), specifications sheets, promotional materials and instructions for use; and (2) affixed to the product or product package where it is sold for installation by a nonprofessional applicator.

(d) To fail clearly and conspicuously to disclose (1) on all specification sheets and instructions for use; and (2) affixed to the product or product package where it is sold to a nonprofessional applicator, recommended end use instructions and installation instructions for a cellular plastics product to minimize any unreasonable combustion hazards indicated by the

evaluation required by § 439.2(c) involved in reasonably foreseeable end uses.

NOTE.—The requirement to provide instructions does not mitigate the separate disclosure requirements of § 439.2(c).

Issued: August 9, 1978.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-22188 Filed 8-8-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

COVERAGE OF EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Annual Wage Reporting

AGENCY: Social Security Administration, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed amendments would require that States and interstate instrumentalities (which are treated as States to the extent practicable) report their covered employees' wages to the Social Security Administration (SSA) on an annual basis rather than quarterly. This change would be effective 18 months following publication of the final regulations. Legislation requires the private sector to begin reporting on an annual basis beginning with wages paid in 1978. The proposed amendments would place the States under a similar reporting system, and thereby reduce the administrative costs incurred by SSA in maintaining a separate quarterly reporting system for the States.

DATES: Comments must be received by October 10, 1978.

ADDRESSES: Please submit any comments regarding these changes in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5181, 330 Independence Avenue, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. Armand Esposito, Legal Assistant, Office of Policy and Regulations, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7337.

SUPPLEMENTARY INFORMATION: Since 1951, States have been able to enter into voluntary agreements (42 U.S.C. 418) by which social security coverage would be provided for the services of employees of the State and local governments included in the agreements. Under these agreements the States agree to comply with all Department of Health, Education, and Welfare regulations as the Secretary may prescribe to carry out the purposes of section 218 of the Social Security Act (42 U.S.C. 418). Present regulations require that States report the covered wages of State employees and emloyees of their political subdivisions on a quarterly basis. The proposed amendments would change this to an annual basis.

Although Congress has mandated a change from quarterly to annual reporting for private employers, it did not rule out a change to annual reporting by the States. Rather, it appears that Congress wanted to avoid any abrupt changes in the States' reporting procedures and insure that the annual reporting procedures would not take effect automatically for State and local governments as for the private sector. In furtherance of a smooth transition to a reporting change by State and political subdivisions, section 7 of Pub. L. 94-202 requires that we publish final regulations at least 18 months before any change can become effective with respect to wage reporting by State and political subdivisions. Accordingly, the proposed amendments will not become effective before January 1, 1981.

Economy in Federal government operations dictates that, to the extent possible, a uniform method of reporting be used by all employers. State and political subdivision employees comprise about 10 percent of the 100 million workers for whom we receive wage reports. There are about 64,000 reporting entities among the 50 States, Puerto Rico, and the Virgin Islands and about 60 interstate instrumentalities. (Interstate instrumentalities are treated as States to the extent practicable.) SSA's maintenance of dual computer systems and procedures (for private and public employers) and other attendant items would increase administrative costs. We believe this shift to annual reporting will result in a substantial savings for SSA. States which have relatively large staffs processing these reports should realize proportionate savings by this proposed change to annual reporting.

The regulations will:

A. Require the States and political subdivisions to file their wage reports annually;

B. Permit the States to utilize magnetic tape or other appropriate media in making their wage reports; and

C. Establish February 28 of each year as the due date for filing the required wage reports for the previous year with the Social Security Administration, Baltimore, Md. 21235.

Section 404.1255a, which we are herein proposing to revise, was recently published with a notice of proposed rulemaking (43 FR 13400, March 30, 1978). That section now needs to be revised to reflect this proposed change to annual reporting.

The proposed regulations are to be issued under the authority of sections 205, 218, and 1102 of the Social Security Act; 49 Stat. 624, 64 Stat. 514, and 49 Stat. 647; 42 U.S.C. 405, 418, and 1302.

(Catalog of Federal Domestic Assistance Program Nos. 13.802—13.805—Social Security programs.)

Dated: July 11, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: August 1, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

§ 404.1230 [Amended]

1. Section 404.1230 is amended by changing the parenthetical cross-reference after the last sentence from "See § 404.1250(b)* * *" to "See § 404.1250a * * *."

2. Section 404.1250 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 404.1250 Wage reports and contribution returns in general.

(a) *Wage reports.* Each State shall report, by coverage group, the wages paid each covered employee included in its agreement until it files the final report as required by § 404.1252. The State shall report the wages paid for covered services during an entire calendar year. The State shall also submit along with the wage report the original of a recapitulation report identifying each political subdivision by its assigned number and, where appropriate, each coverage group by its assigned number and payroll record unit number.

(b) *Wage reports of remuneration for agricultural labor subject to $150 wage limitation.* A State may exclude from its agreement any services the remuneration for which would not be wages

under section 209(h)(2) of the act. If it does so, the State shall identify in the wage report and on any report of adjustments the individuals affected and the amount of remuneration paid to each individual which was subject to the $150 limitation.

(c) *Contribution returns.* The State shall forward the original of the contribution return in accordance with § 404.1255a(c). Contribution payments shall be made in accordance with § 404.1223.

* * * * *

3. Section 404.1250a is revised to read as follows:

§ 404.1250a Wage reports for employees performing services in more than one coverage group.

(a) *Employee of state in more than one coverage group.* Where an individual is a State employee in more than one coverage group, the aggregate wages paid the employee shall be reported for only one coverage group. The wages reported for each employee shall not exceed the annual wage limitations in § 404.1027.

(b) *Employee of political subdivision in more than one coverage group.* Where an individual is as an employee of a political subdivision in more than one coverage group, the aggregate wages paid the employee shall be reported for only one coverage group. The wages reported for each employee shall not exceed the annual wage limitations in § 404.1027.

(c) *Employee of state and of one or more political subdivisions.* Where an individual performs covered services as an employee of the State and as an employee of one or more political subdivisions and the State agreement does not provide for the computation of contributions pursuant to section 218(e)(2) of the act, the State and each political subdivision shall report the amount of covered wages it paid the employee up to the annual wage limitations in § 404.1027.

(d) *Employee of more than one political subdivision.* Where an individual performs covered services an an employee of more than one political subdivision and the State agreement does not provide for the computation of contributions pursuant to section 218(e)(2) of the act, each political subdivision shall report the covered wages it paid the employee up to the annual wage limitations in § 404.1027.

(e) *Employees performing services for more than one employer; section 218(e)(2) of the act applicable.* Where an agreement provides for the computation of contributions for any calendar year in accordance with section 218(e)(2) of the act, the State will compute the total amount of wages it and/or all political subdivisions paid the employee which are subject to section 218(e)(2) of the act. It will then report the amount of wages paid but not in excess of the annual wage limitations in § 404.1027. In effect the employee is treated as having had only one employer. If the employee also had wages not subject to section 218(e)(2) of the act, those wages must be reported separately.

4. In § 404.1250b, paragraphs (c) and (d) are revised to read as follows:

§ 404.1250b Filing of single wage report where individual is jointly employed by more than one employer.

* * * * *

(c) The agent shall file for each reporting period a wage report, which includes the total wages paid to each individual, except that the amount of wages each employer reports for each employee shall not exceed the annual wage limitations listed in § 404.1027. (For provisions relating to the furnishing of wage statements to employees, see § 404.1230.)

(d) The agent shall include in the wage report: the agent's name, address, and identification number; and the name and identification number of each employing entity.

5. Section 404.1251 is revised to read as follows:

§ 404.1251 Period covered by each wage report.

(a) *For periods prior to 1981.* The State shall report the wages for the calendar quarter in which they were actually paid. If the wages were constructively paid in a prior calendar quarter, the wages shall be reported for the prior quarter (see § 404.1026(b) relating to constructive payment of wages).

(b) *For periods after 1980.* The State shall report the wages for the calendar year in which they were actually paid. If the wages were constructively paid in a prior calendar year, the wages shall be reported for the prior year (see § 404.1026(b) relating to contructive payment of wages).

6. Section 404.1252(a) is revised to read as follows:

§ 404.1252 Final reports.

(a) *Termination of entire agreement.* A final report can be filed only by a State whose agreement with the Secretary has been terminated. That report shall cover each coverage group which was included in the terminated agreement. It shall:

(1) Be marked "final report;"

(2) Cover the period during which the final payment of wages subject to the agreement is made; and

(3) Indicate the last date wages were paid.

Along with the final report, the State shall submit a statement showing the title and business address of the State official responsible for keeping the State's records, and of each State and local official responsible for the records for the periods covered by the agreement. The State shall also submit a recapitulation report identifying each political subdivision by its assigned number and, where applicable, each coverage group by its assigned number and payroll record unit number.

* * * * *

7. Section 404.1254 is revised to read as follows:

§ 404.1254 Use of prescribed forms.

(a) *Description and availability of prescribed forms.* SSA will generally furnish the forms to be used in making each report required by this subpart M. However, the fact SSA did not furnish a form will not excuse a State from making the required report. If the State has not received the prescribed forms in ample time to prepare and file them, they should request the necessary forms from SSA. (See §§ 404.1255 and 404.1255a relating to the place and time for filing returns and reports; see § 404.1252 relating to final reports).

(b) *Compliance with instructions.* Each wage report and contribution return shall be submitted in accordance with current administrative instructions and regulations. (See § 404.1255a regarding the time and place for filing returns and reports and § 404.1256 (c) and (e) relating to copies of returns, reports, schedules, and statements, and to the place and period for keeping records.) Reports and returns which have not been prepared in accordance with those instructions and regulations will not be accepted.

(c) *Only States can submit wages reports.* A State shall file only one wage report for the State and its political subdivisions. Any supplemental, adjustment, or correctional wage report filed shall constitute a part of the State's wage report. Political subdivisions of a State may not file individual wage reports with SSA, but must forward these to the State for consolidation.

(d) *Correction of errors.* If a State fails to report or incorrectly reports the wages of an employee, the State shall submit an adjustment report. The adjustment report must be completed and submitted to the SSA in accordance with current administrative instructions and regulations (see §§ 404.1260-404.1262).

(e) *Permission to report on magnetic tape or other media.* After approval by SSA, magnetic tape or other media

may be substituted for any form prescribed for making a report or reporting information.

8. Section 404.1255a is amended by deleting paragraph (d) and revising paragraph (c) to read as follows:

§ 404.1255a Place and time for filing contribution returns, wage reports, and making deposits of contributions—for months on or after (effective date).

* * * * *

(c) *Contribution returns and wage reports.* (1) *Where to be filed.*—All contribution returns, wage reports, and adjustment reports shall be filed with the SSA.

(2) *When to be filed.* (i) *For years prior to execution of agreement.*—If an agreement or modification provides for the coverage of employees prior to the year of execution of the agreement or modification, any contributions due shall be paid and contribution returns or wage reports filed within 90 days of the date of execution of the agreement or modification.

(ii) *For year of execution of agreement or modification.* If the agreement or modification provides for the coverage of employees for the year of execution of the agreement or modification, the State or interstate instrumentality shall pay any contributions due and file the contribution returns or wage reports for such year by February 28 of the year following the date of execution or within 90 days of the date of execution, whichever is later.

(iii) *For years after execution of agreement or modification.* The State or interstate instrumentality shall file the wage report for any calendar year after the year of execution of the agreement or modification by February 28 of the following calendar year.

(3) *Good Cause.* For good cause shown, the Secretary may allow a State additional time to file a contribution return and wage report. (Interest will be assessed for failure to pay contributions within the prescribed time period. See § 404.1225).

(4) *Consolidated report incomplete.* If the responsible State official has not received a wage report for the State or any of its political subdivisions in time to file a consolidated wage report by the due date, the State official shall indicate on the recapitulation report each political subdivision, coverage group or payroll unit which has not submitted a wage report. Upon receipt of the delinquent wage report, the State official shall send it to the SSA and shall deposit in the Federal Reserve Bank, or branch thereof, any contributions payable on the additional wages reported. Interest will be assessed on such delinquencies (see § 404.1226).

(5) *Due date is a Federal non-workday.* If the last day for paying contributions or filing any wage reports or contribution returns falls on a Federal non-workday, the contributions may be paid and the contribution return or wage report filed on the next business day.

(6) *Mailed reports.* If mailed, the contribution return or wage report shall be posted in time to reach the SSA under ordinary handling of the mails by the due date.

§ 404.1261 [Amended]

9. Section 404.1261 is amended by deleting the word "quarterly" wherever it appears in paragraph (a)(1), by changing the cross-reference in paragraph (a)(1) from "§ 404.1250(a)(3)" to "§ 404.1250(c)," by changing the words "calendar quarter" in the second sentence of paragraph (a)(2) to "reporting period."

§ 404.1262 [Amended]

10. Section 404.1262 is amended as follows: In paragraph (a), by changing the word "quarterly" wherever it appears to "reporting period"; in paragraph (b)(1) by changing the word "quarters" to "years," and by changing the term "quarter or quarters" wherever it appears to "reporting period"; in paragraph (c)(1) by changing the word "calendar quarters" in the second sentence to "reporting periods."

§ 404.1263 [Amended]

11. Section 404.1263(c) is amended by changing the word "quarter" to "reporting period" wherever it appears, and by deleting the last sentence.

§ 404.1281 [Amended]

12. Section 404.1281 is amended by changing the word "quarters" wherever it appears in paragraph (a) and (b) to "years."

§ 404.1282 [Amended]

13. Paragraph (b) in § 404.1282 is amended by changing the word "quarter" to "years."

14. Section 404.1285 is amended as follows: by changing the word "quarters" in the first sentence of paragraph (b) to "years"; by revising paragraph (c)(1) as follows; and by revising the punctuation in paragraph (c)(3), and by deleting paragraph (c)(4).

§ 404.1285 Time limitations on credits or refunds.

* * * * *

(c) *Periods of limitation.* * * *

(1) 3 years, 3 months, and 15 days after the year in which the questioned wages were paid or alleged to have been paid; or

(2) 3 years after the due date of the payment which included the overpayment; or

(3) 2 years after the overpayment was made to the Secretary of the Treasury.

[FR Doc. 78-22221 Filed 8-8-78; 8:45 am]

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 41]

PREPARATION OF ROLLS OF CERTAIN TRIBES AND BANDS OF INDIANS

Potawatomi Tribe or Nation of Indians

JULY 21, 1978.

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes to amend its regulations to include requirements for enrollment as a lineal descendant to share in the distribution of judgments awarded the Potawatomi Tribe or Nation of Indians. A plan for the disposition of the judgment funds was developed and presented to Congress as required by law. The proposed amendment will implement that plan.

DATE: Comments must be received on or before September 8, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Potawatomi Tribe or Nation of Indians, as it existed during the period 1795 to 1833, was awarded judgments in two claims, dockets 15-K, 29-J, and 217, and dockets 15-M, 29-K, and 146. The net total of the awards is $6,401,689.68. A plan for the disposition of the funds was developed and presented to Congress as required by the act of October 19, 1978, 87 Stat. 466. Congress did not disapprove the plan and it became effective on March 6, 1978.

The plan provides for the division of the funds among the Citizen Band of Potawatomi Indians, Oklahoma, the Prairie Band of Potawatomi Indians, Kansas, the Hannahville Indian Community of Michigan, the Forest

County Potawatomi Community, Wisconsin, and the lineal descendants of Michigan and Indiana Potawatomis, including the Huron, Pokagon, and other bands, who are not enrolled with one of the four named organized Potawatomi Bands or communities. The lineal descendant group's proportional share of the funds is to be distributed in equal shares to persons found eligible for enrollment to share in the funds.

The purpose of this amendment is to include in the regulations the requirements for enrollment to share in the funds as a lineal descendant of the Potawatomi Tribe or Nation, as prescribed by the plan, and to establish a deadline for filing applications for enrollment.

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

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

§ 41.3 Qualifications for enrollment and the deadline for filing.

* * * * *

(dd) *Potawatomi Indians of Michigan and Indiana.* (1) All persons born on or prior to and living on March 6, 1978,

(i) Who are citizens of the United States, and

(ii) Whose names appear on or as lineal descendants can trace their ancestry to persons designated on the following official records of Potawatomi Indians of Michigan and Indiana: Cadman payment roll of 1896, Taggart census roll of 1904, other payment or annuity rolls of persons designated as "Potawatomi Indians of Michigan and Indiana," Huron Band, Pokagon Band, or "Notawasepi and other Bands," acceptable to the Secretary, and

(iii) Who are not enrolled or entitled to be enrolled as members of the Citizen Band of Potawatomi Indians, Oklahoma, Prairie Band of Potawatomi Indians, Kansas, Hannahville Indian Community of Michigan, or the Forest County Potawatomi Community, Wisconsin.

(2) Applications for enrollment must be filed with the Superintendent, Michigan Agency, Bureau of Indian Affairs, P.O. Box 884, Sault Ste. Marie, Mich. 49783, and must be received at the agency no later than close of business (date, 6 months after publication of final regulations, will be inserted). Applications received after that date will be rejected for failure to file in time, regardless of whether the applicant otherwise meets the requirements for enrollment.

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

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-22204 Filed 8-8-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 1-78]

[28 CFR Part 16]

PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Exemption of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 28 CFR § 16.85 to permit the U.S. Parole Commission to revise its alternate means of access under the Privacy Act of 1974 in order to bring its rules relating to disclosure under the Privacy Act into conformity with the pre-hearing disclosure provisions of the Parole Commission and Reorganization Act of 1976. The authorization would specifically permit the Commission to apply the same substantive exemptions to all disclosure requests by prisoners and would avoid the possibility of inconsistent disclosure decisions relating to the same information.

DATES: All comments must be received on or by September 8, 1978.

ADDRESSES: All comments should be addressed to the Administrative Counsel, Office of Management and Finance, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT:

Bronson E. Clayton, 202-739-4165.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission has published a complete text of its proposed consolidated disclosure system at 42 FEDERAL REGISTER 41435 (August 17, 1977), together with an explanation of its purpose and intent. The authority for that disclosure system (§ 16.85(c)) is revised as follows:

§ 16.85 Exemption of Parole Commission system—limited access.

* * * * *

(c) Consistent with the legislative purpose of the Privacy Act of 1974 the U.S. Parole Commission will initiate a procedure whereby present and former prisoners and parolees may obtain copies of material in files relating to them that are maintained by the U.S. Parole Commission. Disclosure of the contents will be affected by providing copies of documents to requesters through the mails. Disclosure will be made to the same extent as would be made under the substantive exemptions of the Parole Commission and Reorganization Act of 1976 (18 U.S.C. § 4208) and rule 32 of the Federal Rules of Criminal Procedure. The procedure relating to disclosure of documents may be changed generally in the interest of improving the Commission's system of disclosure or when required by pending or future decisions and directions of the Department of Justice.

Dated: July 28, 1978.

KEVIN D. ROONEY,
Assistant Attorney General
for Administration.

[FR Doc. 78-22128 Filed 8-8-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 940-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Yolo-Solano Air Pollution Control Districts's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to the Yolo-Solano Air Pollution Control Districts's (APCD) rules and regulations have been submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board for the purpose of revising the California State Implementation Plan (SIP). The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on these rules, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted up to September 8, 1978.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco Calif. 94105. Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region IX office at the above address

and at the following locations: Yolo-Solano Air Pollution Control District, 323 First Street, Suite 5, P.O. Box 1006, Woodland, Calif. 95695. California Air Resources Board, 1102 "Q" Street, P.O. 2815, Sacramento Calif. 95814. Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Wally Woo, Chief, California SIP Section, EPA, Region IX, 415-556-7288.

SUPPLEMENTARY INFORMATION: The California Air Resources Board submitted the following rules and regulations on June 22, 1978:

Rule:
1.2 Definitions.
1.4 Enforcement.
2.8 Open burning, general.
2.13 Organic solvents.
2.15 Disposal and evaporation of solvents.
2.16 Fuel burning heat or power generators.
2.17 Circumvention.
2.20 Orchard heaters.
4.4 Analysis fees.
5.1 Applicable articles of the health and safety code.
5.4 Contents of petitions.
5.10 Place of hearings.
5.11 Notice of hearings.
6.5 Standards for granting applications.
6.7 Permit form.

In addition, regulations were submitted concerning new source review. Those regulations will be considered in a separate FEDERAL REGISTER action.

The State also submitted regulations concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on June 22, 1978. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State implementation plan under section 110 of the act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of sections 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

Under section 110 of the Clean Air Act as amended, and 40 CFR part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the region IX office. Comments received on or before September 8, 1978, will be considered. Comments received will be available for public inspection at the EPA region IX office and the EPA public information reference unit.

(Sec. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: July 28, 1978.

SHEILA M. PRINDIVILLA,
Acting Regional Administrator.

[FR Doc. 78-22148 Filed 8-8-78; 8:45 am]

[6560-01]

[40 CFR Part 180]

[PP 6E1818/P83; FRL 941-3]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Proposed Tolerance for the Pesticide Chemical O,O-Dimethyl S-[(4-oxo-1,2,3-Benzotriazin-3(4H)-Ylmethyl] Phosphorodithioate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes a tolerance for residues of the insecticide *O,O*-dimethyl *S*-[4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl] phosphorodithioate on gooseberries. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of the insecticide on gooseberries.

DATE: Comments must be received on or before September 8, 1978.

ADDRESS: Send comments to: Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA (202-755-2516).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, as submitted a pesticide petition (PP 6E1818) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.154 be amended by the establishment of a tolerance for residues of the insecticide *O,O*-dimethyl *S*-[4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl] phosphorodithioate in or on the raw agricultural commodity gooseberries at 5 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included 2-year dog and rat feeding studies with no-observable-effect levels (NOEL) of 5 ppm, a three-generation mouse reproduction study with a NOEL of 25 ppm., a rabbit teratology study (negative at 0.75 milligram (mg)/kilogram (kg) of body weight (bw)/day (highest level fed), teratology studies in rats and mice which were negative at 5 mg/kg bw/day (highest level tested), a rat oral lethal dose (LD_{50}) study (LD_{50} 5-6 mg/kg bw), and a hen neurotoxicity study which was negative.

The acceptable daily intake (ADI) is 0.025 mg/kg bw/day based on the NOEL in the 2-year rat study and using a 10-fold safety factor. An oncogenicity study in a second mammalian species is lacking. However, the theoretical maximal residue contribution (TMRC) for the insecticide will be increased by less than 1 percent by the proposed tolerance. In addition, the toxicological studies show no potential carcinogenic, teratogenic, reproductive, or delayed neurotoxic effects for the insecticide. There are no actions currently pending against continued registration of the insecticide.

Tolerances have previously been establish (40 CFR 180.154 and 180.154a) for residues of the insecticide on a variety of raw agricultural commodities at levels ranging from 10 ppm to 0.04 ppm (negligible residue). A food additive tolerance (21 CFR 193.150) of 1 ppm has been established for residues of the insecticide in soybean oil, and feed additive tolerances (21 CFR 561.180) of 5 ppm in dried citrus pulp and 1.5 ppm in sugarcane bagasse have also been established. The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes.

Gooseberries are not a feed item, and therefore there is no reasonable expection of residues in eggs, meat, milk, or poultry.

The pesticide is considered useful for the purpose for which a tolerance is being sought, and it is concluded that the tolerance of 5 ppm established by amending 40 CFR 180.154 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, by September 8, 1978, that this rulemak-

ing proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP6E1818/P83". All written filed in response to this notice of proposed rulemaking will be available for public inspection in the Office of the Federal Register section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 2, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

It is proposed that part 180, subpart C, section 180.154 be amended by alphabetically inserting the tolerance of 5 ppm on gooseberries in the table to read as follows:

§ 108.154 O,O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl] phosphorodithioate; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Gooseberries	5
* * * * *	

[FR Doc. 78-22146 Filed 8-8-78; 8:45 am]

[6560-01]

[40 CFR Part 180]

[FRL 941-5; PP 7E1964/P86]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Proposed Tolerances for the Pesticide Chemical Terbacil

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that tolerances be established for residues of the herbicide terbacil on sainfoin forage and hay. The proposal was submitted by the interregional research project No. 4. This amendment to the regulations would establish maximum permissible levesl for residues of terbacil on sainfoin forage and hay.

DATE: Comments must be received on or before September 8, 1978.

ADDRESS COMMENTS TO: Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA, 202-755-2516.

SUPPLEMENTARY INFORMATION: The interregional research project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Montana has submitted a pesticide petition (PP 7E1964) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.209 be amended by the establishment of tolerances for combined residues of the herbicide terbacil (3-*tert*-butyl-5-chloro-6-methyluracil) and its hydroxylated metabolites (calculated as terbacil) in or on the raw agricultural commodities sainfoin forage and sainfoin hay at 5 parts per million (PPM).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included a 2-year dog feeding study with a no-observable-effect level (NOEL) of 50 ppm based on systemic effects, a 2-year rate feeding study (no oncogenic effects) with an NOEL of 250 ppm based on systemic effects and, a multigeneration rat reproduction/teratology study with an NOEL of 250 ppm based on the reproductive performance of treated dams.

The nature of the residue is adequately understood, and an adequate analytical method (microcoulometric gas chromatography) is available for enforcement purposes. Tolerances have previously been established for residues of terbacil on a variety of crops at levels ranging from 5 ppm to 0.1 ppm. The acceptable daily intake (ADI) is 0.0125 milligram (mg)/kilogram (kg) of body weight (bw)/day. The maximal permissible intake (MPI) for a 60-kg man is 0.75 mg/day. The theoretical maximal residue contribution (TMRC) in the human diet is not increased by this tolerance on an animal feed item; thus the risk increment from dietary exposure is zero.

There are no actions currently pending against continued registration of terbacil, and no desirable data are lacking from the petition. Sainfoin is a feed item for grazing animals. There is no reasonable expectation of residues from this use in eggs; swine meat, fat, or meat byproducts; or poultry. The established tolerances for residues in milk and in the meat, fat, and meat byproducts of cattle, goats, horses, and sheep are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(1). The pesticide is considered useful for the purpose for which tolerances are being sought, and it is concluded that the tolerances of 5 ppm established by amending 40 CFR 180.209 will protect the public health.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, on or before September 8, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP7E1964/P86." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Office of the Federal Register from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 2, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

It is proposed that part 180, subpart C, § 180.209 be amended by alphabetically inserting sainfoin forage and sainfoin hay at 5 ppm in the table in paragraph (b), to read as follows:

§ 180.209 Terbacil; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Sainfoin, forage	5
Sainfoin hay	5
* * * * *	

[FR Doc. 78-22147 Filed 8-8-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2 and 87]

[Gen. Docket No. 78-231; RM-3095; FCC 78-534]

PROVIDING FOR ESTABLISHMENT OF A JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM IN THE 960-1215 MHz AERONAUTICAL RADIONAVIGATION BAND

Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Commission is proposing to amend its Rules to provide for U.S. Government stations to use the band 960-1215 MHz for a Joint Tactical Information Distribution System (JTIDS). The band, allocated internationally to the aeronautical radionavigation service, is shared by Government and non-Government users in the United States. The Department of Defense proposes to initiate the JTIDS in the band on the condition that harmful interference is not caused to aeronautical radionavigation. The JTIDS is intended to provide an integrated Communication, navigation and identification function. It will distribute digital information among airborne and surface based elements in a tactical theater. The Commission proposes to add a footnote to the frequency allocation table providing for the service and also to provide a method for non-Government users to report incidents of interference.

EFFECTIVE DATE: Comments must be received on or before October 12, 1978, and reply comments must be received on or before October 27, 1978.

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

FOR FURTHER INFORMATION CONTACT:

John E. Jacobs, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: July 27, 1978.

Released: August 9, 1978.

By the Commission: Commissioner Washburn concurring in the result.

In the matter of amendment of Parts 2 and 87 of the Commission's rules to provide for the establishment of a Joint Tactical Information Distribution System in the 960-1215 MHz aeronautical radionavigation band, GEN Docket No. 78-231, RM-3095.

1. Notice of proposed rulemaking in the above-entitled matter is hereby given.

2. The Office of Telecommunications Policy (National Telecommunications and Information Administration), U.S. Department of Commerce has petitioned the Commission to "take appropriate action, in coordination with this Office, to modify the National Table of Frequency Allocations * * *" to add a U.S. footnote authorizing the Joint Tactical Information Distribution System (JTIDS) in the band 960-1215 MHz on condition that harmful interference will not be caused to the aeronautical radionavigation service. The petition was assigned RM-3095 and placed on public notice on April 10, 1978. No comments relative to the petition were received.

3. The band 960-1215 MHz is allocated worldwide to aeronautical radionavigation as the primary service. ITU Radio Regulation No. 341, which applies, states that:

> "The band 960-1215 MHz is reserved on a worldwide basis for the use and development of airborne electronic aids to navigation and any directly associated ground based facilities."

Similarly, in the United States Table of Frequency Allocations, rule § 2.106, the allocation is for aeronautical radionavigation as the sole service.

4. Within the United States, the band is shared by Government and non-Government users. Government use is regulated by the National Telecommunications and Information Administration (NTIA) and non-Government use by the Commission. The band is structured into 126 channels, each channel spaced at 1 MHz intervals. Channel numbers 1 through 16 and 60 through 69 are assigned for military use. The remaining channels are used to support Government and non-Government use of the National Airspace System (NAS). Management of the non-Government use of the band (frequency assignments, etc.) is coordinated with the Federal Aviation Administration (FAA) by FCC. The Aeronautical Assignment Group (AAG), chaired by the Federal Aviation Administration, is authorized to take interim action, on behalf of the Frequency Assignment Subcommittee (FAS) of the NTIA, on assignment requests in this band.

5. The Department of Defense (DOD) has had a requirement for a tactical digital information system that will incorporate Tactical Air Navigation (TACAN), providing navigational, communication, and identification capabilities. Additionally, this system will provide tactical operations with air-to-air, air-to-surface, ship-to-ship, and ground-to-ground digital data and voice communications. It must provide relative aeronautical radionavigation, location, and Identification Friend or Foe (IFF) functions. It may also be used as a data link for ground and amphibious operations as well as control and guidance of tactical weapons systems. To this end, they have been developing the JTIDS.

6. The JTIDS has been designed and developed to operate in the 960-1215 MHz aeronautical radionavigation band. Because of a requirement that the system be secure from hostile jamming and resistant to signal intercept, spread spectrum modulation techniques were chosen. Due to the volume and type of information to be handled and the extent of protection required to counteract intentional jamming, the DOD has stated that they would require a minimum of 190 MHz bandwidth for acceptable system performance. Hybrid pseudo random pulse modulation plus fast frequency hopping is used to achieve the spread spectrum modulation. That is, the radiated signal is intentionally spread and also hops from frequency to frequency over a wide bandwidth from 960-1215 MHz.

7. The JTIDS is proposed to be installed aboard various types of U.S. military manned and unmanned aircraft, U.S. Naval ships and appropriate ground stations. There is a requirement for a 500 mile communication range. Each mobile installation will use a transmitter power of 200 watts with an omnidirectional antenna of sufficient gain to compensate for any loss in the transmission line. Aircraft will have a nominal net gain of 2 dBi (antenna gain counterbalanced by cable loss) while major ground installations may have a nominal net antenna gain of 3 dBi. In addition, in instances where the required range cannot be realized, aircraft at higher altitudes can operate as relay stations.

8. Because of the current international use of the 960-1215 MHz band for safety services, many questions have arisen about the potential for harmful interference being caused to aeronautical radionavigation systems. There are two major civil radionavigation systems currently in use in the band. These are:

Distance Measuring Equipment (DME)—This operates in the range 978-1215 MHz on specified channels. In this system, the aircraft transmits a signal consisting of paired pulses on a specific frequency to a ground transponder. When received at the transponder, the signal generates reply pulses on another specific frequency. The return pulses are measured by the aircraft radio which then gives the pilot the distance to the navigational beacon. There are approximately 1000 of these stations in use in the continental United States, some installed by the FAA and others authorized to non-Government entities by the FCC. The frequencies used are channeled and paired within the band in accordance with Annex 10 to the Convention on International Civil Aviation. Within the U.S., the channelization and pairing assignments are listed in FCC rules, section 87.501(h).

Air Traffic Control Radar Beacon System (ATCRBS) also known as Secondary Surveillance Radar (SSR)—This system consists of ground based interrogators transmitting on 1030 MHz and aircraft transponders transmitting on 1090 MHz. The purpose is to provide Air Traffic Control (ATC) with aircraft identification and altitude information for traffic control purposes. The JTIDS is not intended to operate on or near these frequencies.

In addition to these systems in use, the FAA has firm plans for operation of the Discrete Address Beacon System (DABS), Beacon Collision Avoidance System (BCAS) and the Microwave Landing System Distance Measuring Equipment (MLS/DME) in the National Airspace System in this band. There is concern over the electromagnetic compatibility (EMC) with JTIDS in this regard.

9. A routine allocation or assignment function involving the frequencies shared by Government and non-Government users would normally be handled by the Spectrum Planning Subcommittee (SPS) of the Interdepartment Radio Advisory Committee (IRAC). However, the problem of satisfying a system such a JTIDS is multifaceted and complex. In addition to the EMC aspects, any such allocation would have national and international ramifications. Because of this, the question was addressed in the OTP by a JTIDS Steering Committee chaired by OTP. Members of the committee were from the FAA, DOD, FCC and the Office of Telecommunications (OT) of the Department of Commerce. OTP and OT are now incorporated into NTIA.

10. OT Report No. 78-140 entitled, "EMC Analysis of JTIDS in the 960-1215 MHz Band," examines in detail the frequency requirments and the extensive testing and EMC analysis that was performed. This report consists of 7 volumes and is approximately 2000 pages in length. Because of the volume of this report, it is not included in this notice, but is availble for public inspection at the FCC offices, 1919 M Street NW., Washington, D.C. Copies are available from the National Technical Information Services (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161. A further report, OT Report 78-138 entitled, "Assessment of the Bands 225-4990 MHz for Possible JTIDS Application," was prepared. These reports and information contained in letters to the OTP from FAA on February 13, 1978, and from DOD on March 17, 1978, formed the basis on which OTP made the decision, now reiterated by NTIA, to support development of JTIDS in the 960-1215 MHz band. Report 78-138 may also be obtained from the NTIS and it, along with the letters, may be inspected at the Commission's offices. We strongly urge that this information be reviewed carefully by any persons desiring to make comments in this proceeding. Detailed technical operating parameters of JTIDS can be found in the referenced reports.

11. The OTP, and now NTIA, has requested that an accommodation be provided in the Table of Allocations in the 960-1215 MHz band for the inclusion of JTIDS by Government stations. Since the table contained in Rule § 2.106 is concerned primarily with non-Government applications, reference will be made by the addition of a U.S. footnote. It should be noted that the footnote and the OTP/NTIA restrictions (which follow this paragraph) have been changed from those proposed in RM-3095. This is a result of discussions within the IRAC to use more definitive and accurate phrasing in these items.

12. To insure EMC, the following restrictions have been imposed on JTIDS by NTIA:

a. JTIDS Transmitter.

(1) Transmissions will be automatically prevented if:

(a) The frequency-hopping mode fails to distribute the JTIDS spectrum uniformly across the band;

(b) The radiated pulse varies from the specified width of 6.4 microseconds ± 5%;

(c) The energy radiated within ±7 MHz of 1030 MHz and 1090 MHz exceeds a level of 60dB below the peak of the JTIDS Spectrum as measured in a 300 kHz bandwidth.

(2) The JTIDS will be prohibited from transmitting if the time slot duty factor exceeds a 20 percent duty factor for any single user and a 40 percent composite duty factor for all JTIDS emitters in a geographic area.

b. Required geographic separation distances between terrestrial JTIDS terminals (fixed, land mobile, portable, shipborne or transportable) and ground-based ATC systems will be determined using the guidelines and technical criteria established by the EMC evaulation.

c. Changes to the JTIDS design and planned operational deployment that differ from those considered during the EMC evaluation will require reassessment to assure continued JTIDS and ATC system compatibility.

d. The installation of JTIDS and ATC equipment on the same aircraft will be engineered to assure compatible operations.

Additionally, NTIA, in order to assure compatibility between JTIDS and future developments in ATC systems, will conduct detailed discussions with FAA and the DOD to establish guidelines and procedures to be followed.

13. In the international use of the navigational aids in the band, certain standards for accuracy are necessary and have been established. With respect to DME, for example, International Civil Aviation Organization (ICAO) Annex 10 recommends that, at distances of from zero to 200 nautical miles from the transponder, the total system error, excluding reading error, should be not greater than ±0.5 nautical mile or ±3 percent of distance measured, whichever is greater. In the U.S., the operational range on some radials exceeds 200 nmi. To maintain this accuracy, standards for transmitter and receiver specifications and siting criteria are recommended. NTIA, as stated above, has proposed such criteria to assure EMC in the band. To assist in the prevention of interference to the safety services, we propose to amend part 87 of the rules to establish reporting requirements for those licensees who experience interference. Reporting will follow the format set forth in appendix 8 of the ITU Radio Regulations, but we solicit comments on the extent of the information to be provided. This information should take into consideration the possible derogation caused by interference to the navigation systems such as denied service areas.

14. Considering the above, we propose to amend rule § 2.106 to add a new U.S. footnote which provides for establishment of systems utilizing spread spectrum techniques in the 960-1215 MHz band. Such systems will be limited to Government stations and will be authorized on the condition that harmful interference will not be caused to the aeronautical radionavigation service. The footnote will further provide for review of system parameters prior to any development or prior to any modification that affects EMC and will not deny the use of this band to support new aeronautical radionavigation systems for use in the National Airspace System. Review will also be required for ATC systems designs to assure EMC between ATC systems and JTIDS.

15. Additionally, although authorization of such JTIDS-type systems will not be a function of the Commission, we propose to insert an appropriate footnote to part 87, Aviation Services, § 87.501(h)(1), noting the possible existence of such systems for the information of civil aviation applicants and licensees. Interference from JTIDS will be difficult to identify because of its random transmission characteristics. However, provision will be made for notification of any instances of harmful interference.

16. The proposed amendments of the rules as set forth below are issued pursuant to the authority contained in Sections 4(i), 303(c), (f), (g) and (r) of the Communications Act of 1934, as amended.

17. Pursuant to applicable procedures set forth in § 1.415 of the Com-

mission's rules, interested parties may file comments on or before October 12, 1978, and reply comments on or before October 27, 1978. All relevant and timely comments will be considered by the Commission before final action is taken in the proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

18. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs or comments filed shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Parts 2 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 2—Frequency Allocations and Radio Treaty Matters: General Rules and Regulations.

Section 2.106, the Table of Frequency Allocations, is amended to read as follows; new footnote US —— is added as follows:

§ 2.106 Table of Frequency Allocations.

Band (MHz) 5	Allocation 6
960-1215	G, NG (US____)

* * * * *

Footnotes:

US (——) Government systems utilizing spread spectrum techniques for terrestrial communication, navigation and identification may be authorized to operate in the band 960-1215 MHz on the condition that harmful interference will not be caused to the aeronautical radionavigation service. These systems will be handled on a case-by-case basis. Such systems shall be subject to a review at the national level for operational requirements and electromagnetic compatibility prior to development, procurement or modification.

B. Part 87—Aviation Services.

1. In § 87.501, paragraph (h)(1) is amended to add a footnote as follows:

§ 87.501 Frequencies available.

* * * * *

(h)(1) The band 960-1215 MHz is available for the use of ground based facilities and directly associated airborne electronic aids to air navigation.[1] When distance measuring equipment (DME) is intended to operate in association with a single VHF navigation facility in the 108-117.975 MHz frequency band, the DME operating channel shall be paired with the VHF channel as shown in the following table.

* * * * *

2. New § 87.506 is added to read as follows:

§ 87.506 Harmful interference to radionavigation stations.

(a) Military or other Government stations have been authorized to establish wide-band systems using frequency-hopping spread spectrum techniques in the 960-1215 MHz band. Authorization has been permitted on the basis of noninterference to the established aeronautical radionavigation service in this band. In order to accommodate this requirement for the system (Joint Tactical Information Distribution System (JTIDS)) within the band, restrictions are imposed. Transmission will be automatically prevented if:

(1) The frequency-hopping mode fails to distribute the JTIDS spectrum uniformly across the band;

(2) The radiated pulse varies from the specified width of 6.4 microseconds ± 5 percent;

(3) The energy radiated within ±7MHz of 1030 and 1090 MHz exceeds a level of 60 kB below the peak of the JTIDS spectrum as measured in a 300 kHz bandwidth.

The JTIDS will be prohibited from transmitting if the time slot duty factor exceeds a 20 percent duty factor for any single user and a 40 percent composite duty factor for all JTIDS emitters in a geographic area.

(b) In the event any interference to radionavigation systems operating in the 960-1215 MHz band is experienced, the information should be reported immediately to the nearest office of the Federal Aviation Administration, the National Telecommunications and Information Administration, Washington, D.C. 20504, or the nearest Federal Communications Commission field office. The following information should be provided to the extent available:

(1) Name, call sign and category of station experiencing the interference;

(2) Date and time of occurrence;

(3) Geographical location at time of occurrence;

(4) Frequency interferred with;

(5) Nature of interference;

(6) Other particulars.

[FR Doc. 78-22191 Filed 8-8-78; 8:45 am]

[1] U.S. Government stations have been authorized to use this band to establish systems using spread spectrum techniques on condition that harmful interference is not caused to the aeronautical radionavigation service. Refer to Rule Section 87.506 for information regarding reporting such interference.

[6712-01]

[47 CFR Parts 2, 81, 83, 87, 89, 91, 93, and 97]

[Docket No. 19909; RM-2164; FCC 78-533]

STATE OF ALASKA

Providing a Common Emergency Frequency For Use by Single Sideband High Frequency Stations Licensed and Providing for Such Operations in the Table of Frequency Allocation; Termination of Proceeding

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Terminates the proceeding and permits continued use of 4383.8 kHz in Alaska for emergency communications. This proceeding was not terminated since it was not known whether any additional frequencies would be required or operational problems encountered which would require Commission action. The State of Alaska has now stated that the frequency is satisfactory and the proceeding may now be terminated.

EFFECTIVE DATE: Nonapplicable.

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

FOR FURTHER INFORMATION CONTACT:

Nicholas G. Bagnato, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of parts 81, 83, 87, 89, 91, 93, and 97 of the Commission's rules to provide a common emergency frequency for use by single sideband high frequency stations licensed under these parts in the State of Alaska; amendment of part 2 to provide for such operations in the table of frequency allocations; Second Report and Order (proceeding terminated).

Adopted: July 27, 1978.

Released: August 4, 1978.

1. A first report and order in the above-captioned matter was released on December 20, 1974, and appeared in the FEDERAL REGISTER on December 30, 1974 (39 FR 44983).

2. This matter satisfied an urgent requirement by the State of Alaska to provide an emergency frequency for communications to the remote villages in Alaska and to hunters, trappers, and other personnel in the wilderness of Alaska. Adequate communications is available only in the major population areas of Alaska. In other areas, radio is the only means of communications and is usually operated on a scheduled basis by private companies or government agencies. However, on weekends or after duty hours, it was virtually impossible for the residents in these remote areas to summon medical aid, call for emergency transportation, or even talk to a medical officer. The purpose of this proceeding was to select a common emergency frequency which would be available for all licensees in Alaska and to the Government agencies operating communications facilities in Alaska. In addition to having the common frequency, the State of Alaska established an emergency communications network which maintains a watch on this frequency and provides net control for the system.

3. The proceeding was not terminated at that time since it was not known whether any additional frequencies would be required or operational problems experienced which would require Commission action to improve the system. The State of Alaska was to submit an operational report after a period of 1 year for evaluation by the Commission.

4. The State of Alaska experienced difficulties in effecting the installation and in March 1976 requested an additional year to submit the operational report. This extension was granted. The operational report has now been received and the State of Alaska reports that the frequency is satisfactory. Accordingly, further rulemaking is not necessary.

5. The State of Alaska has now suggested that the Commission consider enlarging the operation to permit general calling on the emergency frequency for use similar to 2182 kHz in the maritime services. We believe that permitting calling on the emergency frequency without having common working frequencies would lead to improper operations which would negate its value as an emergency frequency, therefore, we do not believe this suggestion should be considered.

6. Accordingly, *it is ordered*, That this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22229 Filed 8-8-78; 8:45 am]

[6712-01]

[47 CFR Parts 2 and 83]

[Gen. Docket No. 78-230; FCC 78-532]

VESSELS OPERATING IN COASTAL WATERS

Providing for the Use of Emergency Position Indicating Radiobeacons (Class C)

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: Notice of proposed rulemaking is given in the matter of VHF emergency position indicating radiobeacons (EPIRB's) which may be used by vessels plying the coastal waters of the United States. This action will permit the introduction of a low-cost radio communications device, to be used by the boating public, to summon aid in a distress situation. Use of such equipment will improve efficiency of search and rescue operations and may reduce loss of life and property due to boating accidents.

DATES: Comments must be filed on or before November 10, 1978, and reply comments must be filed on or before December 11, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Robert C. McIntyre, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of parts 2 and 83 of the rules to provide for the use of emergency position indicating radiobeacons (class C) for vessels operating in coastal waters.

Adopted: July 27, 1978.

Released: August 4, 1978.

1. Notice is hereby given of rulemaking to provide for the voluntary use of and technical specifications governing VHF (class C) emergency position indicating radiobeacons (EPIRB's) by vessels operating in coastal waters.

BACKGROUND

2. EPIRB's are radio frequency devices which transmit signals used to facilitate search and rescue (SAR) operations by indicating the position of a distress situation. The EPIRB's carrier frequency is modulated by a well defined, distinctive tone chosen to be easily recognizable aurally, and compatible with radio location equipment used by search-and-rescue personnel. Coast Guard aircraft and cutters, as well as some land-based stations, used in SAR operations are equipped with radio direction finding equipment capable of receiving EPIRB signals. The position of an EPIRB when transmitting such a signal can be rapidly located by means of radio-direction-finding equipment and aid can be brought with a minimum of delay to the vehicle or person in distress. In addition to its primary function of providing position information it is recognized that the EPIRB will often serve as a distress alerting device when other means of communication are not successful or available.

3. The Commission adopted rules [1] on March 7, 1974, which provided for the use of EPIRB's which operate on the frequencies 121.5 and 243.0 MHz as a consequence of recommendations from the Maritime World Administrative Radio Conference, Geneva, 1967, Intergovernmental Maritime Consultative Organization, U.S. Coast Guard, and National Transportation Safety Board. These rules govern the use of so-called class A and class B EPIRB's by vessels expected to operate in international waters beyond range of the VHF radiotelephone coverage provided by coast stations. These EPIRB's are primarily monitored and located by aeronautical SAR activities. Vessels such as recreational craft, which generally ply the coastal waters of the United States, were not included in this system.

4. The need for this type of device for vessels operating in coastal waters is evidenced by current statistics which indicate that 95 percent of the boating accidents, many involving loss of life, occur within 25 miles of shore. Further, 90 percent of recreational vessels do not at present equip with any radio means of obtaining assistance in case of a boating accident. In a large number of cases the capability to transmit a signal for alerting and locating purposes could have improved the efficiency of SAR operations and in some cases prevented the loss of life. For these reasons, it is considered that our rules should provide for the voluntary use of a low-cost EPIRB operating in the VHF maritime mobile band in coastal waters up to 20 miles from shore. These devices would primarily be monitored and located by surface SAR activities.

5. The U.S. Coast Guard, through a network of radio stations, monitors the frequency 156.8 MHz for distress and safety purposes along the coast of the United States, providing VHF radio communication coverage for distances of at least 20 miles from shore. The Coast Guard watch on this frequency is further supplemented by ship stations and certain Commission-licensed coast stations operating in this band. Because of the large

[1] Docket No. 19693, report and order adopted March 7, 1974, FCC 74-228, 39 FR 10140.

number of stations normally monitoring the international distress, safety and calling (DSC) channel, signals transmitted by an EPIRB device on 156.8 MHz will have a high probability of alerting such stations to a distress situation. To have a viable system it is a necessary condition that operation of an EPIRB on the safety, distress, and calling frequency should not significantly increase the potential for interference on channel 16 (RR 1363). The interference aspect of the system design has been considered by the staff members of the Commission and the Coast Guard. The results of research on this matter has led to the technical standards set forth in our proposal contained herein. We are of the opinion that these standards will improve the safety of the boating public.

PROPOSAL

6. A detailed study of salient characteristics of this system has been conducted by the Department of Transportation.[2] The system concepts developed were evaluated in tests conducted on prototype models during July and August 1977 at Point Allerton, Hull, Mass. These tests verified the adequacy of signal strength to provide an alert based on a 1-watt EPIRB power output, and demonstrated the capability of ship- and land-based stations to effectively use direction-finding equipment to locate an EPIRB.

7. The Commission is desirous of obtaining comments concerning the operational and technical aspects of the EPIRB system. The proposed rules provide for the transmission of the international radiotelephone two-tone alarm signal alternately on channel 15 (156.750 MHz) and channel 16 (156.8 MHz). The transmission on channel 16 is for purposes of alerting nearby vessels and shore-based facilities to a distress situation; the transmission on channel 15 provides a signal suitable for homing purposes. The EPIRB operation proposed is based on approximately 24-hour operation after which time it will turn off automatically. During this period there will be four different cycles. A cycle comprises a number of sequences each of which is divided into time periods. The table which follows describes the various cycles in detail.

Characteristic \ Cycle		1	2	3	4
Period 1	Channel No. 16 (Sec)	1.5	1.5	1.5	1.5
Period 2	Channel No. 15 (Sec)	15.0	15.0	15.0	15.0
Period 3	Channel No. 16 (Sec)	1.5	1.5	1.5	1.5
Period 4	No Transmission(Sec)	40.5	78.5	154.5	306.5
Period 5	Channel No. 15 (Sec)	15.0	15.0	15.0	15.0
Period 6	No Transmission(Sec)	40.5	78.5	154.5	306.5
Total Time for 1 sequence (Sec)		114	190	342	646
Duration of Cycle (Hrs)		0.51	1.69	6.08	15.72
Number of Sequences/Cycle		16.0	32.0	64.0	87.6

The cycles differ only in that the period during which no transmissions occur (periods 4 and 6) become progressively longer for each subsequent cycle. If a 30-minute period is considered in each cycle, for comparative purposes, it is noted that the transmission time on channel 16 is 47, 28, 16, and 8 seconds for cycles 1 through 4 respectively. We are of the opinion that this sequential method of signal transmission will not cause an unacceptable level of interference on channel 16, however, comments in this regard are specifically solicited.

8. Concerning the type of emissions permitted on the DSC frequency 156.8 MHz, the international radio regulations (RR No. 1359) requires the use of class of emission F3 for radiotelephony and RR No. 1359B provides for the use of selective calling on this frequency. RR No. 1363 further states that the use of emissions capable of causing harmful interference to the frequency 156.8 MHz are forbidden. The emission characteristics we are proposing for the class C EPIRB's are similar to that permitted for purposes of selective calling. Based on our study of the interference potential of the previously described EPIRB system, we are of the opinion that the use of class of emission F9 as proposed will not cause harmful interference to the DSC frequency 156.8 MHz. Therefore, the proposed system is construed to be in accord with the international radio regulations.

9. The technical specifications governing the design of this equipment, to the extent practicable, have been formulated to minimize the cost of these devices to the user. Attention of interested parties is nevertheless directed to these standards and modifications are solicited to improve the cost of effectiveness of the EPIRB design without significantly degrading the performance of the system.

10. The proposed amendments of the rules, as set forth below, are issued pursuant to the authority contained in sections 4(i) and 303 (b), (c), (e), (f), (g), and (r) of the Communications Act of 1934, as amended.

11. Pursuant to applicable procedures set forth in section 1.415 of the Commission's rules, interested persons may file comments on or before November 10, 1978, and reply comments on or before December 11, 1978. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into ac-

[2] VHF-FM emergency position-indicating radiobeacon final report, Department of Transportation, Peter D. Engels, Charles I. Murphy and Howard C. Salwen, March 1978.

count other relevant information before it, in addition to the specific comments invited by this notice.

12. In accordance with the provisions of section 1.419 of the Commission's rules, an original and five copies of all statements, briefs, or comments filed shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Parts 2 and 83 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

In § 2.106, column II of table is amended to read as follows:

§ 2.106 Table of frequency allocations.

Frequency (MHz) 10	Nature of services and stations 11
* * * * *	
156.75	Maritime mobile. Maritime radiodetermination. Ship. Emergency position indicating radiobeacon.
156.8	Maritime mobile (distress, safety, and calling). Maritime radiodetermination. Ship Emergency position indicating radiobeacon.
* * * * *	

PARTS 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.68, paragraph (b) is amended and a new paragraph (c) is added as follows:

§ 83.68 Authority for survival craft stations and EPIRB stations.

* * * * *

(b) An EPIRB station, equipped with a class A or class B device, may be operated on board a vessel under the following circumstances:

* * * * *

(c) Authority to operate an EPIRB station, equipped with a class C device, must be applied for as provided in § 83.36(a).

2. In § 83.132, paragraph (a) is modified as follows:

§ 83.132 Authorized classes of emission.

(a) * * *

(5) Stations not covered by the above.

* * * * *

(iii) For the frequency: 156.75 MHz—F9 class C EPIRB stations.

(iv) For the frequency: 156.8 MHz—F9 class C EPIRB stations.

* * * * *

3. In § 83.133 the table is modified by adding a new class of emission and an editorial explanation note 6 as follows:

§ 83.133 Authorized bandwidth.

(a) * * *

Classes of emission	Emission designator	Authorized bandwidth (kHz)
* * * * *		
F3	[3]36F3	[3]40.0
F9	[4]14.4F9	20.0
F9	[6]20,000 F9	[6]20,000
* * * * *		

* * * * *

6. Applicable to marine hand-held radars.

* * * * *

4. Section 83.134 is revised to add a new paragraph (k) as follows:

§ 83.134 Transmitter power.

* * * * *

(k) For emergency position indicating radiobeacon stations operating on the frequencies 156.75 and 156.8 MHz the peak radiated power on each frequency during and at the end of 24 hours of continuous operation, and without replacement or recharge of batteries, shall not be less than 1 watt. This specification shall apply to all units whether dry, or immersed for any or all of the 24-hour period in fresh or salt water, as long as the antenna extends above the water surface. The peak effective radiated power shall be determined pursuant to the measurement procedure set out in Commission publication bulletin OCE 45. The required power shall be obtained over a temperature range of −20 to +50 degrees Celsius.

5. Section 83.137 is modified by adding a new paragraph (j) as follows:

§ 83.137 Modulation requirements.

* * * * *

(j) Emergency position indicating radiobeacon stations operating on the frequencies 156.75 and 156.8 MHz shall employ the international radiotelephone two-tone alarm signal to frequency modulate the carrier frequencies.

(1) The EPIRB signal transmitted on the frequencies 156.75 and 156.8 MHz shall consist of two substantially sinusoidal audio frequency tones transmitted alternately. One tone shall have a frequency of 2200 Hz and the other a frequency of 1300 Hz, the duration of each tone shall be 250±1 millisecond. The frequency tolerance of the tones shall be less than 5,000 parts in 10^6.

(2) An EPIRB sequence consists of 6 time periods having the following specified duration and transmission characteristics:

Time period	Duration (seconds)	Transmission frequency (MHz)
1	1.5	156.8
2	15	156.75
3	1.5	156.8
4	40.5 to 646	None
5	15	156.75
6	40.5 to 646	None

(3) The EPIRB shall transmit four different cycles. The period of each successive cycle shall be increased by extending the duration of the "off" periods (t_4 and t_6) during which the device is not transmitting a signal. The period of t_4 and t_6 shall be incrementally increased in proportion to the time the device is continuously activated according to the following schedule:

Cycle	Time period of t_4 and t_6 (seconds)	Number of sequences
1	40.5	16
2	78.5	32
3	154.5	64
4	306.5	87.6

6. A new § 83.146 is added as follows:

§ 83.146 Special requirements for emergency indicating radiobeacon stations, class C.

(a) Class C emergency position indicating radiobeacon stations are limited to transmission using F9 emission on the frequencies 156.75 and 156.8 MHz.

(b) The equipment shall consist of a transmitter, an integral antenna, and a power supply. The transmitter and power supply shall be secured in separate compartments in a single watertight case to prevent corrosive agents generated by the battery from affecting components in the transmitter compartment.

(c) The equipment shall be provided with a visible and/or audible indicator which clearly shows that the device is operating. The indicator shall be activated by the transmitter RF output power.

(d) The equipment shall be capable of operation when hand held or when floating in water after storage for extended periods under marine environmental conditions.

(e) The switch used to activate the EPIRB shall be of a type which indicates the State of the equipment (on-off) by the physical position of the switch. A guard shall be provided to prevent changing the position of the switch without operation of the guard device.

(f) The equipment case shall be designed to be resealable without the use of special tools or sealing compounds and EPIRB operation shall not be degraded by submersion in sea water for a period of 24 hours.

(g) The EPIRB shall float in fresh water with the antenna vertical and completely out of the water.

(h) The equipment shall not incorporate any vacum tubes in its design. Components shall be so rated that the equipment will meet the requirements specified for EPIRB's in this part after extended periods of inaction while carried in vessels and subjected to marine environmental conditions. Operation into any load likely to occur in service, from open to short, shall not result in permanent damage to the equipment.

(i) The exterior of the equipment shall have no sharp edges or projections which could easily damage inflatable survival equipment, injure personnel, or damage their clothing. Means shall be provided to secure the EPIRB to a survival craft or person.

(j) Concise, unambiguous operating instructions, understandable by untrained personnel, shall be conspicuously and permanently displayed on the equipment. The display shall be weather resistant, waterproof, and abrasion resistant; it shall indicate that the device is "to be used solely for distress purposes."

(k) The equipment shall have no exposed areas or terminals that could produce a condition capable of igniting inflammable gases or materials.

(l) The antenna shall be securely attached to the case and designed such that it is capable of being safely stowed without being damaged. The antenna shall provide optimum performance at 156.75 and 156.8 MHz; its radiation pattern shall be essentially omnidirectional.

(m) The equipment shall not be damaged when dropped into water from a height of 6 meters and shall comply with the technical standards set out in this part.

(n) The EPIRB shall comply with the technical standards set out in this part when plunged into sea water after storage at a temperature of 50° C to sea water at 20° C.

(o) The EPIRB may be tested in coordination with, or under the control of the U.S. Coast Guard to insure that testing is conducted under electronic shielding, or other conditions sufficient to insure that no transmission or radiated energy occurs that could be received by a radio station and result in a false distress alarm. If testing with Coast Guard involvement is not practicable, brief operational tests are authorized provided the tests are conducted within the first 5 minutes of any hour for one complete EPIRB sequence specified in § 83.137(j) of this part.

(p) The EPIRB shall automatically be turned off after a period of 24 hours ±5 percent. Provisions shall be provided in the equipment to permit the EPIRB transmission sequence to be repeated by manually placing the on-off switch momentarily in the "off" position and returning it to the "on" position.

(q) The EPIRB shall be equipped with a visual indication of a low battery condition capable of preventing the transmitter from complying with the output power requirements prescribed in § 83.134(k).

[FR Doc. 78-22181 Filed 8-8-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21474; RM-1968; RM-2810; RM-2978]

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY RULES AND FCC FORM 395

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding involving the amendment of form 395 (Annual Employment Report) with respect to minorities, women and the handicapped. Petitioner, National Association of Broadcasters, states the additional time is necessary so that it can respond to the issues involved.

DATES: Comments must be filed on or before September 15, 1978. Reply comments must be filed on or before October 2, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Carol Foelak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 1, 1978.

Released: August 3, 1978.

In the matter of amendment of broadcast equal employment opportunity rules and FCC form 395, docket No. 21474, RM-1968, RM-2810, RM-2978.

1. On November 18, 1977, the Commission issued a notice of proposed rulemaking, 42 FR 60168, to amend form 395 (Annual Employment Report) with respect to minorities and women. The comment and reply comment dates for that notice were April 24 and May 24, 1978, respectively.

2. On June 28, 1978, the Commission adopted a further notice of proposed rulemaking, 43 FR 30078, in which it expanded the scope of its equal employment (EEO) rules and reporting requirements to include qualified handicapped persons. The present dates for filing comments and reply comments are August 29 and September 13, 1978, respectively.

3. On July 19, 1978, a request was filed by the National Association of Broadcasters ("NAB") seeking an extension of time for filing comments and reply comments to and including October 30 and November 13, 1978, respectively. NAB states that the Commission's further notice raises a host of issues, ranging from questions such as whether the FCC has the authority to adopt rules in this area, what definition of terms should be employed and whether a licensee should be required to modify its facilities to accommodate a physically handicapped employee. It states further that recognizing the complexity of the novel issues posed by the proposal, the Commission invited the submission of comments on laws and regulations dealing with the handicapped and their practical application. NAB contends that, in light of time-consuming research which must be conducted regarding the Commission's jurisdiction in this area, the announced dates for the filing of comments and reply comments are not realistic. NAB urges that the Commission, in its effort to move the form 395 proceeding forward in a timely fashion, not do so at the expense of reaching an informed decision regarding the handicapped based on a full record. It therefore requests that the instant proposal be separated from the form 395 proceeding and extend the time for filing comments and reply comments on the proposal in the further notice to October 30 and November 13, 1978, respectively.

4. Currently it is still our belief that the issue of whether to include the handicapped in our EEO rules and, if so, how to go about it, can best be explored in this proceeding, which looks toward revising our annual EEO reporting form. While we are persuaded that some additional time is warranted, we believe an extension of time for filing comments and reply comments to and including September 15 and October 2, 1978, respectively, is sufficient to respond to the issues involved. If, after evaluation of these comments, it becomes apparent that, as NAB asserts, the issue of how our EEO rules and policies affect the handicapped should be dealth with separately from docket 21474, we will make that determination at that time.

5. *Accordingly, it is ordered,* That the request for extension of time filed by the National Association of Broadcasters is granted to the extent that the dates for filing comments and reply comments are extended to and including September 15 and October 2, 1978, respectively, and is denied in all other respects.

6. This action is taken pursuant to sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commmission's rules.

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

[FR Doc. 78-22192 Filed 8-8-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-237; RM-2937; RM-2956; FCC 78-583]

AMENDING THE PRIMER ON ASCERTAINMENT OF COMMUNITY PROBLEMS BY BROADCAST APPLICANTS IN REGARD TO THE COMMUNITY LEASER SURVEY

Memorandum Opinion and Order

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order and notice of proposed rulemaking.

SUMMARY: As part of the material submitted in commercial broadcast renewal applications, licensees are called upon to provide a showing of their efforts to ascertain and respond to the problems, needs, and interests of the community they are licensed to serve. In fulfilling this obligation, the Commission requires licensees to consult with community leaders who represent the institutions and elements contained in the community leader checklist. This action proposed to change the requirements for renewal applicants to indicate that broadcasters are required to consult any element which is significant in their communities even if the element is not already included on the community leader checklist. This action, which would have the effect of requiring that all significant community elements be contacted by broadcaster, results from a petition filed by the National Gay Task Force.

DATES: Comments must be received on or before October 16, 1978, and reply comments on or before November 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: In this same proceeding, the FCC denied a more narrowly drawn petition, filed by the National STOP E.R.A. Committee and the Eagle Forum, requesting that the Primer on ascertainment of community problems by broadcast renewal applicants be amended by the addition to the community leader checklist of activist women's organizations whose views differ from feminist women's liberationist groups.

Adopted: August 1, 1978.

Released: August 8, 1978.

By the Commission: Commissioners Lee, Washburn and Fogarty concurring in the result; Commissioner Quello dissenting and issuing a statement.

1. The Commission has before it for consideration[1] a petition (RM-2937) filed on behalf of the National Gay Task Force and 142 gay organizations ("NGTF" or "petitioners"), requesting the addition of a category entitled "organizations of and for the gay community" to the community leader survey checklist[2] of the *Primer on ascertainment of community problems by broadcast renewal applicants ("1976 Primer").*[3]

2. As part of the material submitted in commercial broadcast renewal applications, licensees are called upon to provide a showing of their efforts to ascertain and respond to the problems, needs and interests of the community they are licensed to serve. In fulfilling this obligation, the Commission requires licensees to consult with community leaders who represent the institutions and elements contained in the checklist. Some of the listed categories may not be found in all communities. Also in, some communities there may be categories other than those listed. With this latter situation in mind the *Primer* provides for a category called "other" which encompasses those elements not on the checklist. Petitioners do not believe that this suffices,[4] however, and they argue that adoption of their proposal is necessary to insure that representatives of the gay community are contacted by broadcasters as part of their ascertainment study.

3. In describing the history of the Commission's ascertainment requirement, petitioners note that it was in 1971 that the first Ascertainment Primer (*"1971 Primer"*) was adopted.[5] The document applied to both applicants for construction permits for new commercial broadcast stations and commercial broadcast license renewal applicants,[6] the latter, however, only on an interim basis.[7] Under the 1971

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[1] Also before the Commission is a one page petition (RM-2956) filed by the National STOP ERA Committee and the Eagle Forum. This petition is discussed in footnote 4.

[2] The checklist contains nineteen institutions and elements, as follows: (1) Agriculture; (2) Business; (3) Charities; (4) Civic, Neighborhood and Fraternal Organizations; (5) Consumer Services; (6) Culture; (7) Education; (8) Environment; (9) Government (local, county, State and Federal); (10) Labor; (11) Military; (12) Minority and ethnic groups; (13) Organizations of and for the Elderly; (14) Organizations of and for Women; (15) Organizations of and for Youth (including children) and students; (16) Professions; (17) Public Safety, Health and Welfare; (18) Recreation; and (19) Religion.

[3] 57 FCC 2d 418 (1976).

[4] The STOP ERA petition requests that the *1976 Primer* be amended by adding to the checklist activist women's organizations whose views are substantially different from feminist women's liberationist groups. The only argument given in support of the proposal is that the views of women are as diverse as the population itself and activist women's groups are not in agreement on many controversial issues of major public importance, especially those directly involving women. No comments, formal or informal, in support or in opposition, to the petition have been submitted. Category No. 14 of the checklist provides for consultation with "organizations of and for Women." Nothing in the *Primer* limits these contacts to "feminist women's liberationist" groups. Moreover, since the broadcaster has the discretion to decide which representative organizations in a particular category it will contact, the Commission does not intrude in this area. Therefore, there is no need to take any action in this regard, especially since the licensee is expected to present contrasting viewpoints on the controversial issues of public importance which it deals with in its programing.

[5] *Primer on ascertainment of community problems by broadcast applicants,* 27 FCC 2d 650 (1971).

[6] Ascertainment guidelines and reporting methods for noncommercial educational broadcast applicants, permittees and licensees were provided for in a separate *Primer,* 58 FCC 2d 526 (1976).

[7] Broadcast renewal applicants were required to comply with the *1971 Primer* as an

Footnotes continued on next page

guidelines, renewal applicants were required, among other things, to consult with leaders of the significant groups in their communities to learn of the problems, needs and interests of those in the proposed service areas. The determination that a group was significant, as noted by NGTF, was to be based upon a compositional study of the service area, taking into consideration a number of criteria including a group's size and its influence or lack of influence in the community. Through these consultations, as well as contacts with the public at large,[8] the local problems and needs were to be ascertained. Broadcasters were then and are now to plan responsive programming. However, decisions relating to the specifics of programing, such as which ascertained community problems are chosen for treatment, what programs are selected as responsive to those problems, and the time of the presentation and duration of the program, are left to licensee discretion.

4. Petitioners note that both prior and subsequent to the *1971 Primer*, the Commission adjudicated numerous issues regarding the sufficiency of ascertainment efforts on the part of applicants for either a new broadcast station or the renewal of an existing broadcast station. In a number of cases, the Commission found that the ascertainment studies were deficient because they failed to include consultations with leaders of significant community groups and institutions, such as labor, Blacks, women, students, educators, the poor, youth, agriculture, the professions, local government, industry, and Mexican-Americans.[9]

5. In 1973, as noted by NGTF, the Commission concerned itself with ascertinment guidelines specifically applicable to license renewal applicants. After the appropriate rulemaking procedures,[10] the *1976 Primer* was adopted. The new *Primer* incorporated several major changes in ascertainment policy regarding renewal applicants. However, the only change relevant to the instant proceeding, and thus warranting discussion here, is the substitution of a community leader checklist for the previously required compositional survey.[11] The Commission adopted this checklist approach as a means of assuring licensee contacts with what could ordinarily be assumed to be a representative cross-section of community leaders, while at the same time relieving them of the burdens and uncertainties involved in the *Primer's* compositional study. As noted by petitioners, the checklist embodies "common socio-economic elements" which can be added to or subtracted from the match the particular characteristics of any broadcaster's own service area. Thus, the licensee may demonstrate that one or more of these elements or institutions is not present in its community. Alternatively, the licensee, at its own option, may utilize the "other" category for certain elements not on the checklist but peculiar to a given community. However, as stated in paragraph 19 of the *1976 Primer*, if a licensee has consulted with leaders in all checklist categories, its coverage of all significant elements will not be open to question. NGTF submits that even though applicants are not restricted to consultations with leaders of the nineteen identified groups, in view of this holding, it is logical to assume that most will go no further to identify community groups than the listed categories. Petitioners contend that under the guidelines of the *1971 Primer*, gay organizations sometimes were consulted as part of a broadcaster's ascertainment study. Now, according to NGTF, they are told by broadcasters that since they are not on the checklist, broadcasters need not, and therefore will not, consult with them. NGTF is concerned that the nineteen established categories will "freeze" the licensee's assessment of community needs and cause it to overlook newly developing interest groups. Thus, NGTF contends, the Commission should retain the flexibility to amend the checklist to reflect a pluralistic society in which groups are constantly emerging. Otherwise, they conclude, significant groups will be omitted from a licensee's programing determinations.

6. Petitioners assert, and attempt to support with sociological data, that gay men and women are a significant element and, as such, should be included in the checklist as a numbered category. According to NGTF, there are 20 million gay men and women, constituting ten percent of the national population.[12] NGTF says that gay people are found in cities towns and villages across the Nation and that there are more than 1,800 gay organizations throughout the country.[13] Petitioners also assert that these individuals suffer considerable discrimination.[14] NGTF submits that the struggle of other minorities against the stereotypes in which they were traditionally portrayed in the broadcast media provides a model for the gay minority. The gay civil rights movement, it is asserted, parallels both the women's movement and the Black civil rights movement. The ascertainment structure has taken cognizance of these groups and so, petitioners submit, should it specifically recognize the gay community. Therefore, NGTF purposes that the community leader checklist be amended by the addition of the category "organizations of and for the gay community."

7. There have been numerous comments in favor of the petition,[15] most of those filings being informal ones.[16] Many commenting parties merely state their support of the petition, while others, to some extent, reiterate petitioners' arguments. A number of commenters submit, as did NGTF, that broadcasters as a group will do exactly what the Commission requires and not one iota more. They also argue that if the gay community is denied such access to broadcast industry management, gay individuals would be sentenced to a life of ghetto-

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Footnotes continued from last page

interim measure until standards particularly appropriate to them were adopted. 27 FCC 2d 650 at 655 (1971). See para. 5, *infra*, for a discussion of the *1976 Primer*.

[8] Broadcast applicants also were and presently are required to consult with a random sample of members of the general public as part of the ascertainment process.

[9] If an applicant's ascertainment study is found to be defective, its application for either renewal or for a construction permit would have to be denied.

[10] These procedures consisted of a *notice of inquiry*, 40 FCC 2d 379 (1973), and a *further notice of inquiry and proposed rulemaking*, 53 FCC 2d 3 (1975).

[11] It should be noted, however, that the licensee is required to maintain a listing of certain demographic aspects of its city of license, including total population figures, numbers and proportions of males, females, minorities, youth and the elderly in its public file.

[12] In support of this ten percent figure, petitioners submit, among other things, a letter from the Indiana University for Sex Research indicating that data from 1938 to 1963 reveals that 13.95 percent of males and 4.25 percent of females or a combined average of 9.13 percent of the total population had either extensive or more than incidental homosexual experience. According to that letter, a similar study conducted today would yield a significantly higher percentage of homosexuality in the population. No studies, however, have been done indicating how many U.S. citizens consider themselves to be homosexuals.

[13] Petitioners state that the homosexual community is not only an extensive and cohesive one, but provides a full panoply of services to its members. Assistance is given in such areas as jobs, housing, medical and legal aid and counseling.

[14] NGTF cites a recent Harris poll as indicating that 55 percent of Americans believe that homosexuals suffer the greatest amount of discrimination in the country today.

[15] Formal comments in support of the petition were filed by the Office of Communication of the United Church of Christ and others; James D. Cagle, Chairman of the Gay Political Caucus of Houston; and Ronald Wunschel, President of the Board of Directors of the Chicago Chapter of Dignity. Although the latter two filings were not timely filed, as they were submitted after the due date of October 3, 1977, they will be considered as in the public interest.

[16] More than seventy informal submissions in favor of the petition were filed by individuals, the gay community, church groups, and such organizations as the Women's Action Alliance, Inc., the Palm Beach County Coalition for Human Rights, Commission on the Status of Women, and the American Civil Liberties Union.

ization and stereotyping. The argument is that gay people as the most discriminated against minority in the country must be protected from slander, misrepresentation, ridicule, and exploitation. Inclusion of the gay community in the community leader checklist, it is submitted, would assist gay people in their struggle against discrimination. According to the petition's supporters, the dialogue which can result from ascertainment efforts directed to the gay community would foster an ongoing sharing of ideas and information between broadcasters and this group. Thus, it is said, freedom of speech for gay people would be promoted and the opportunity to discuss important issues relating to them and our society would be enhanced. Although supporting the petition, the Office of Communication of the United Church of Christ and others, request the Commission to reconsider the whole concept of a community leader checklist. They submit that the Commission should recognize the inappropriateness of establishing a firm list of institutions and elements to be ascertained and return to the standard of requiring licensees to develop and document their own lists of elements and institutions significant in their service areas.

8. A few comments have been submitted opposing the petition.[17] They argue that although the gay community is a minority, it is not a significant minority. Moreover, they assert that there is no reason to include the gay community when there is no evidence that this group does anything constructive for any community. Rather, they insist that the behavior gays practice is wrong. They also indicate a concern that adding the gay community to the checklist would open the door to petitions from all types of groups to be listed, complicating further an already complicated and time-consuming procedure.

9. In reply, petitioners assert that the *1976 Primer*, in the interest of lending specificity and certainty to the ascertainment process, established a checklist of nineteen institutions and elements commonly found in a community. Virtually every significant minority group in the country today, with the exception of the gay minority, argues NGTF, is included on the checklist. According to petitioners, there is uncontradicted evidence before the Commission that gay people, in fact, are a substantial minority of the population; that they have been and continue to be the victims of discrimination in areas such as housing and employment; that they have developed a unique subculture through an extensive network of professional, political, academic, social, and social service organizations; and that they are developing a civil rights movement to parallel those of racial minorities and women. NGTF asserts that the Commission has created an irrebutable presumption that an unlisted element or institution is not a significant segment in society and can be excluded from the ascertainment process. Further, they submit that the fear that amendment of the checklist will open the door to numerous petitions from other groups is without a basis. In this regard, NGTF contends that the burden upon any group seeking inclusion in the ascertainment process is a substantial one requiring proof that it is a significant element in communities across the country and that it is an element with special problems, needs and interests. Petitioners argue that they have met this heavy burden of proof and that it is difficult to imagine any other minority element, with the possible exception of the handicapped or disabled, which is not already included on the checklist that could meet that test. In any event, submits NGTF, any minority which can make the substantial showing required is entitled to inclusion as the goal of the ascertainment process is program service responsive to the problems and needs of all minorities and significant community elements.

10. We have carefully considered NGTF's arguments and find merit in much of what is stated. If broadcasters are not contacting certain elements which are significant in their communities because they do not appear on the checklist, a question may arise regarding the adequacy of their ascertainment efforts. Perhaps the category "other" is not serving the purpose for which it is intended, that is to provide for consultations with unlisted elements or institutions which are significant in particular communities. Amendment of the language appearing in the *Primer* which refers to a licensee's obligation with respect to the "other" category, however, seems to be a better alternative for remedying such difficulties than amendment of the checklist. This would have the effect of requiring licenses to consult with any element or institution which is significant in their communities even if it is not one of the nineteen categories on the checklist.[18] We believe this proposal could not only serve petitioners, but that it could benefit other elements, most notably, the handicapped,[19] which are significant in certain communities but are not on the checklist. As a consequence of the proposal, significant elements in a community which are not one of the nineteen included in our checklist could avoid the time consuming process of rule making in order to be ascertained. On the other hand, eliminating the checklist, as suggested by the Office of Communication of the United Church of Christ, rather than substantially assisting petitioners and other elements significant in a number of communities, merely would be a hindrance to broadcasters who find this list a valuable tool in ascertaining their communities' needs and interests.

11. In view of the above, we are proposing to change language appearing in paragraph 19 and Questions 7 and 8 of the *1976 Primer* to indicate that broadcasters have a responsibility to insure that all significant elements or institutions which are readily accessible within their community of license, whether or not they are one of the nineteen categories on the checklist, are ascertained. As to other elements or institutions which may be significant in a particular community but not readily accessible, they too should be ascertained if their existence is brought to the attention of the broadcaster. The changes we propose would aid broadcasters and the public in underlining the basic purpose of ascertainment, which remains that of insuring through a procedural method that avoids direct Commission involvement in programming judgments that the needs and interests of significant segments of a community for which a broadcaster holds a license are taken into account in fullfilling the broadcaster's public trustee programming responsibilities.

12. In view of the discussion contained in footnote 4, the petition filed by the National STOP ERA Committee and Eagle Forum is denied.

13. Based on the foregoing discussion, and pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, it is proposed to amend the *Primer on ascertainment of community problems by broadcast renewal applicants* as described above.

14. Pursuant to applicable procedures set forth in sections 1.415 and 1.46 of the Commission's rules, interested parties may file comments on or

[17] The only formal comments in opposition to the petition were filed by John E. Morrill, Executive Director of the Colorado Broadcasters Association. However, approximately fifteen informal opposition comments have been filed by mostly individuals and such other parties as Radio Station KMM/KMOE-FM and the Anglican Orthdox Church.

[18] In this regard, we note that the broadcaster has the discretion to decide which representative organizations or individuals of a particular element or institution it will contact.

[19] The Denver Commission on the Disabled stated in a letter dated November 22, 1977, that as its organization is a prime advocate of the rights and needs of handicapped people throughout the Denver area, it should be included in the checklist for that area.

before October 16, 1978, and reply comments on or before November 15, 1978. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding.

15. In accordance with the provision of section 1.419 of the Commission's rules, an original and five copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number, including the entire designation (BC docket No. 78-237) in the heading. All filings made in this proceeding will be made available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO,
Secretary.

DISSENTING STATEMENT OF FCC COMMISSIONER JAMES H. QUELLO

Re: Amendment of the Primer on ascertainment of community problems by broadcast renewal applicants in regard to the community leader survey.

In 1976, the Commission sought to provide broadcasters with guidance as to how much and what kinds of community ascertainment efforts would be considered sufficient. We established a list of categories of community leaders which should be included in most communities. Broadcasters had some assurance that by ascertaining those leaders represented in the listed categories they would meet the Commission's requirements.

In this revision, the Commission seems to be returning to the ambiguous pre-1976 approach. Paragraph 11 of this order states that "* * * broadcasters have a responsibility to insure that all significant elements or institutions *which are readily accessible* within their community of license, whether or not they are one of the nineteen categories on the checklist, are ascertained." (emphasis supplies) Thus, opportunities for increased litigation and "dog in the manger" license challenges are significantly increased. Who can say, at this point, what "readily accessible" means in terms of the licensee's responsibilities. Paragraph 11 also notes: "As to other elements or institutions which *may be significant* in a particular community but *not readily accessible*, they too should be ascertained if their existence is brought to the attention of the broadcaster. (emphasis supplied) Now we are required to judge such arcane matters as "inaccessible significance" in assessing licensee performance. We, thus, are prepared presumably, to forego ascertainment of those elements or institutions which are both "inaccessible" *and* "insignificant"; they, of course, know who they are.

I believe that licensees should continue to exercise their good faith judgment with regard to ascertainment. I further believe that the Commission's checklist should provide a reliable means of restricting this requirement to readily understand and reasonable limits.

Therefore, I dissent.

[FR Doc. 78-22219 Filed 8-8-78; 8:45 am]

[6712-01]

[47 CFR PARTS 89, 91, 93 and 95]

[SS Docket No. 78-236; RM-2931; FCC 78-572]

USE OF DIRECTIONAL ANTENNAS AT STATIONS LOCATED AT HIGH ELEVATIONS IN SOUTHERN CALIFORNIA

Proposed Rule Change and Requirement

AGENCY: Federal Communications Commission.

ACTIONS: Proposed rule change.

SUMMARY: Palomar Communication Co., San Diego, Calif., petitioned the Commission in RM-2931 to take action to reduce interference in San Diego from Los Angeles based land mobile systems. The Commission is proposing rules to do this.

DATES: Comments must be filed by October 16, 1978, and reply comments by November 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mark W. Swartwout, Safety and Special Radio Services Bureau, 202-632-6497.

Adopted: July 31, 1978.

Released: August 9, 1978.

In the matter of amendment of parts 89, 91, 93, and 95 (General Mobile Radio Service only) to require the use of directional antennas at stations located at high elevations in southern California, SS docket 78-236, RM-2931.

1. The Commission has before it a petition for rulemaking filed by Palomar Communications Co. (Palomar) asking the Commission to adopt measures which would help reduce interference to land mobile stations operating in the San Diego, Calif. area from stations operating in the Los Angeles area.

2. The interference problem is unique to the southern California area and it is mainly the result of the topography and of the radio propagation characteristics along the coast of southern California. Because of the topography and the requirement of many radio licensees for coverage over large areas, many land mobile radio systems, particularly on frequencies above 450 MHz, are located on high elevation sites, such as Mount Wilson, Mount Lukens, and Santiago Peak. But these and other popular antenna sites provide practically line of sight transmission paths to San Diego. The potential for interference is even greater because of the occurrence of radio frequency "ducts" which are common along the southern California coastline.

3. Although not specifically addressed in the petition, it has been reported that radio licensees in Ventura County, to the north of Los Angeles, are also experiencing similar interference. Any proposed solution should be aimed at alleviating this situation.

4. The petitioner suggests several possible methods for reducing the interference from Los Angeles. The first of these involves the use of directional antennas. The Los Angeles antenna site nearest to San Diego is Santiago Peak. This is located southeast of Los Angeles and is about 110 km (70 miles) from the center of San Diego. Use of a directional antenna on Santiago Peak would allow a licensee to cover Los Angeles and Orange counties while minimizing radiation in the direction of San Diego. The petitioner cites favorable results from experiments already performed on Santiago Peak. The use of a directional antenna resulted in elimination of interference in San Diego while adequately covering Los Angeles.

5. It has been pointed out that some land mobile licensees in Los Angeles have a legitimate need to communicate with mobile units south of Santiago Peak. However, use of an omnidirectional antenna at this site to handle a small amount of traffic to the south may not be reasonable under the circumstances. Remote switching of the antenna could be more appropriate in situations where occasional coverage to the south is required.

6. Interference in San Diego is also regularly received from stations north of Los Angeles or from antenna sites located within the city itself. Clearly the use of antennas that are directional in azimuth only will not allow a licensee to cover Los Angeles from these sites while avoiding San Diego. The second method of interference reduction suggested by the petitioner is the use of "down tilted" antennas. These are antennas that are directional in elevation. By employing such an antenna, a licensee can focus most of the station radiation on the ground within the desired service area and minimize the power beamed at the horizon.

7. Palomar also suggests that if the stations in Los Angeles used reduced effective radiated power (ERP), the interference in San Diego would be less. However, the power reduction required during periods of ducting might

severely limit the utility of the radio facilities in many cases. A more reasonable approach in these cases would be to reduce the ERP in certain directions through the use of directional or down tilted antennas.

8. After the petition was filed, Palomar and other equipment suppliers met with representatives of the California Mobile Radio Association (CMRA). At that meeting it was suggested that an alternate solution would be the use of frequency offsets by stations in San Diego. These would be frequencies in between the regularly assignable channels in the 450 to 470 MHz band. Such operation would provide protection from the operation on the primary channels by systems in Los Angeles. Preliminary tests performed by Palomar and others indicated that such an approach might work. However, this would require all of the effected licensees in San Diego to purchase new crystals and retune their radios for frequencies 12.5 KHz removed from those presently in use. Also, substantially all of the San Diego licensees would have to change their operations at the same time to avoid severe interference among themselves.

9. Based on the information we now have, it appears that requiring the use of directional antennas in southern California is the most equitable solution to this long standing problem. Therefore, we propose to adopt rules which would require licensees and applicants for radio stations above 450 MHz in the Public Safety (part 89), Industrial (part 91), Land Transportation (part 93), and General Mobile Radio (part 95) Services to use directional or downtilted antennas, as appropriate, when the stations are located on Santiago Peak, Mount Lukens or Mount Wilson.

10. It is apparent, however, that some more data is required before final action can be taken to solve this problem. Most important, data is required as to the locations of the interfering and victim stations. The comments filed in response to the petition gave some insight into this, however, more complete information is necessary. Correction of interference from different sites in Los Angeles might require different solutions. While the rules proposed in the Palomar petition are flexible and realistic in that no one solution is expected to solve all the problems, additional information may yield other methods of providing the requested relief.

11. Accordingly, the Commission is asking that interested and affected parties provide responses on the following issues:

A. Are there potential solutions that have not been mentioned here?

B. As mentioned, most of the interference to San Diego seems to originate on Mount Lukens, Mount Wilson, and Santiago Peak. However, stations licensed to other locations are also heard. Monitoring reports should be submitted by persons in San Diego and Ventura Counties. Reports should include time of day and receiving location information, received signal levels, operating frequency and call signs, or other identifying information.

C. It has been reported that some San Diego radio systems cause interference in Los Angeles. Monitoring reports similar to those requested in B should be submitted by persons in Los Angeles.

D. Reduction of interfering signal levels from different sites requires use of different antennas. Comments should be submitted as to the antenna parameters required to reduce interfering signal levels toward San Diego and toward Ventura County from Santiago Peak, Mount Lukens, and Mount Wilson. Specifically, (i) the radiation suppression required for directional antennas, and (ii) the amount of downtilt necessary for other antennas, in the direction of San Diego should be required.

E. What would be the cost to licensees of the modifications to their radio systems (use of directional or downtilted antennas, reduction of ERP, use of offset frequencies, etc.) This should include the capital costs as well as the impact on the performance of the radio systems.

12. Accordingly, notice is hereby given for proposed rulemaking in the above-entitled matter. Any interested person may participate in this proceeding by filing comments by October 16, 1978, and reply comments by November 15, 1978. Comments and reply comments may be addressed to the issues and proposals set forth in this notice and to such other issues as the participants believe are relevant and necessary to the resolution of these matters.

13. Authority for the proposed amendments is contained in section 4(i) and 303 of the Communications Act of 1934, as amended. In accordance with § 1.419 of the Commission's rules, an original and five (5) copies of all comments, reply comments, and other pleadings and submissions shall be furnished to the Commission. All documents will be available for public inspection during regular hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22193 Filed 8-8-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-02]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Cancellation of Official Designation of Utah-Idaho Grain Exchange—Official Designation of States of Utah and Idaho

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the voluntary cancellation of official designation of the Utah-Idaho Grain Exchange of Ogden, Utah, and Pocatello, Idaho. It also announces the designation of the Utah State Department of Agriculture and the Idaho State Department of Agriculture to perform grain inspection services under the U.S. Grain Standards Act, as amended, for the areas previously serviced by the Utah-Idaho Grain Exchange. This notice also proposes geographical areas within which these agencies will operate.

DATE: Comments by September 8, 1978.

FOR ADDITIONAL INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Room 2405, 201 14th Street SW., Washington, D.C. 20250, 202-447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain, at locations where the Administrator determines there is a need for such services (7 U.S.C. 79 and 79a). Such designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

On April 26, 1978, a notice was published in the FEDERAL REGISTER (43 FR 17847) announcing that the Utah-Idaho Grain Exchange (exchange), Ogden, Utah, a designated official inspection agency under the act, requested that its designation to operate as an official inspection agency at Ogden, Utah, and Pocatello, Idaho, be cancelled effective July 1, 1978. The exchange also requested that its Ogden, Utah, designated inspection point be transferred to the Utah State Department of Agriculture and that its Pocatello, Idaho, designated inspection point be transferred to the Idaho State Department of Agriculture.

Interested persons were given until May 26, 1978, to comment on this proposal and/or to apply for designation to operate as an official inspection agency for the area serviced by the exchange. No comments were received regarding the April 26, 1978, notice. Applications were received from the Idaho State Department of Agriculture, to service the State of Idaho only; from the Utah State Department of Agriculture, to service the State of Utah only; and Miller Laboratories, Ogden, Utah, to service the entire territory serviced by the exchange. One other application was received and subsequently withdrawn.

The FGIS has conducted the required investigations of all of the applicants, which included onsite reviews of their inspection points and a determination of the nature of any proscribed conflicts of interest that might have existed.

As a result of these investigations, the Idaho State Department of Agriculture and the Utah State Department of Agriculture were deemed eligible for designation and were selected for designation to perform official inspection functions, (other than appeal inspection), not including weighing, of grain within the interim assigned geographic area.

Documents designating the Idaho State Department of Agriculture and the Utah State Department of Agriculture as official agencies were signed on July 1, 1978. The said designations also include an interim assignment of geographic area within which each official agency shall officially inspect grain. The geographic area assigned to the Idaho State Department of Agriculture, on an interim basis pending final determination in this matter, is: The southern half of the State of Idaho, up to the northern boundaries of the counties of Adams, Valley and Lemhi. The geographic area assigned to the Utah State Department of Agriculture, on an interim basis pending final determination in this matter, is: The entire State of Utah.

NOTE: Section 7(f)(B)(2) of the Act (7 U.S.C. 79(f) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

The specified service point of the Idaho State Department of Agriculture is Pocatello, Idaho. The specified service point of the Utah State Department of Agriculture is Ogden, Utah. Each service point is located within the respective agency's proposed geographic area. The designation documents provide for the inclusion of service points which may be established in the future, within each agency's assigned geographic area.

Publication of this notice does not preclude future amendment of these designations, consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic areas proposed for assignment to these agencies. All views or comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250. All material should be in duplicate and mailed to the Director not later than September 8, 1978. All materials submitted pursuant to this notice will be made available for public inspection at the office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic areas is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C., on August 3, 1978.

L. E. BARTELT,
Administrator.

[FR Doc. 78-22184 Filed 8-8-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket Nos. 33068; Order 78-7-114]

BRANIFF AIRWAYS, INC., ET AL

Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

Transpacific Low-Fare Route Investigation, Docket 33068; Applications of Braniff Airways, Inc., docket 32225; Trans International Airlines, Inc., 31297; Continental Air Lines, Inc., 32018; World Airways, Inc., 32634, 32635; DHL Airways, Inc., 32690; Northwest Airlines, Inc., 32730; Richard D. Neumann, *et al.*, d.b.a. Air United States, 30511; R. W. E. Cox, Jr., d.b.a. United States Overseas Airlines, 30510; S. B. Craft & N.Y. Craft d.b.a. Standard Airways, 30512; for certificates of public convenience and necessity under section 401 of the Act. Applications of Richard D. Neumann, California Air Charter, Inc., d.b.a. Air United States, docket 32411; R. W. E. Cox, Jr., d.b.a. United States Overseas Airlines, 32415; Joseph H. North, Holiday Airways, Inc., 32410; S. B. Craft & N.Y. Craft d.b.a. Standard Airways, 32413, for certificates of public convenience and necessity to engage in supplemental air transportation.

By order 78-3-8, March 1, 1978, the Board granted the applications of Pan American and TWA for suspension and exemption authority on various transatlantic and transpacific routes. TWA was granted a suspension over its route 164,[1] which effectively resulted in the elimination of competitive U.S.-flag authority in a number of Pacific markets.[2]

In granting the requested authority, the Board noted that several low-fare transatlantic and transpacific applications were pending and that we intended to hold low-fare hearings in both areas. We have recently begun the *United States-Benelux Low-Fare Proceedings*,[3] to consider the feasibility of multiple designations and low-fare services across the Atlantic. By this order we are instituting a case to examine these possibilities in the Pacific. As we stated in order 78-3-8, p. 4, "in our judgment, by far the most serious service deficiency in the Pacific is the high fares travelers have to pay; therefore our first priority must be to examine the possibilities presented by these low-fare applications".

At present, Pan American, Northwest, and Continental provide scheduled passenger service in the Pacific with Flying Tiger providing all-cargo service[4] Until recently, none of the certificated passenger carriers proposed individual fares below the existing IATA rate level, and the majority of the transpacific markets seem still encumbered by high fares and appear to lack adequate competitive service.[5] This case will provide a vehicle for considering remedies for these deficiencies, by reviewing low-fare service proposals and exploring the feasibility of multiple carrier awards.

Applications for transpacific scheduled authority have been filed by Braniff, Continental, DHL Airways, Northwest, Trans International and World.[6] In addition, Richard D. Neumann d.b.a. Air United States; R. W. E. Cox, Jr., d.b.a. United States Overseas Airlines; Joseph H. North, Holiday Airways, Inc., and S.B. Craft and N.Y. Craft d.b.a. Standard Airways have filed motions to consolidate their applications for scheduled[7] and supplemental[8] authority with World's applications in dockets 32634 and 32635. Finally, requests for exemption authority have been filed by Continental, DHL, Northwest, Trans International and World basically over the routes contained in their requests for scheduled authority (dockets 32700, 32694, 32825, 32686 and 32635).[9]

In support of their applications, World and DHL assert that they propose to offer low-fare passenger service.[10] Additionally, DHL proposes to provide low-fare small parcel service as well. No answers were received in response to these applications; however, DHL filed a motion to consolidate its application for scheduled transpacific authority with that of World, averring that the applications are mutually exclusive.

Braniff filed a petition in conjunction with numerous civic parties from the Southern and Western United States,[11] for issuance of an order to show cause why its application for a Dallas/Fort Worth-Tokyo route should not be granted. In support, the joint petitioners contend that the Southern States lack convenient air service to Japan; that the authorization of Braniff would allow it to link its South American operations to the Orient via the Southwest; that Braniff could operate the Dallas/Fort Worth-Tokyo route profitably, and that grant of the requested authority would be in the public interest.

The cities of Fort Worth, Memphis, Lubbock and New Orleans, along with the Chambers of Commerce of Fort Worth, New Orleans, the River Region, and Memphis filed supporting answers. They contend that service to Tokyo is needed from the middle portion of the U.S.; that Dallas/Fort Worth is primary air hub for the Southwest United States; and that the award will serve as a stimulus for travel to Tokyo. New Orleans also stated that it was heavily reliant on foreign trade; that Asian countries represent 30 percent of its international trade; that Japan represents 16 percent of the total international port traffic, and that service through Dallas would be substantially more direct than the present service provided by Northwest via Chicago.

Trans International, United, Northwest, and Pan American filed answers

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[1] TWA's approved service plan for route 164 authorizes service between the terminal point Los Angeles-Ontario-Long Beach, Calif., the intermediate points Hilo and Honolulu, Hawaii and the intermediate points: Guam; Okinawa; Taiwan; Hong Kong; and Thailand; and beyond Thailand, to the point Colombo, Sri Lanka and the terminal point Bombay, India.

[2] Guam-Los Angeles/Honolulu/Bangkok/Hong Kong; Los Angeles-Bangkok.

[3] Order 78-6-97, June 13, 1978.

[4] As we have observed, TWA's authority in this area is suspended.

[5] By order 78-1-15, January 5, 1978, the Board dismissed tariff complaints against Pan American's non-IATA North/Central Pacific "budget" fares. Northwest filed a matching tariff and subsequently filed a tariff for "Orient Express" fares from its U.S. gateways to Japan. Both Pan American's and Northwest's tariff filings have become effective, but Japanese authorities have not authorized their use.

[6] Braniff proposes service from Dallas/Fort Worth to Tokyo; Trans International—Oakland/San Francisco/Los Angeles/Seattle/Anchorage/Chicago/Niagara Falls/New York/Newark-Japan/Hong Kong; Continental—Honolulu-Guam-Okinawa-Taiwan; Northwest—San Francisco/Oakland/San Jose/Los Angeles/Ontario/Long Beach-Hilo/Honolulu-Guam-Philippines-Okinawa - Taiwan-Hong Kong; World—Newark / Chicago-Anchorage-Seoul-Hong Kong and Los Angeles/Oakland-Hawaii-Guam-Hong Kong; DHL—same routes as World.

[7] The applications for scheduled authority (dockets 30510, 30511, and 30512) are limited to domestic and overseas (Hawaii) authority only.

[8] The applications for supplemental certificates (dockets 32410, 32411, 32413 and 32415) request authority domestically and between any point in the United States, its territories and possessions (including military installations), on the one hand, and virtually all points in the World.

[9] By order 78-3-8, March 1, 1978, the Board in continuing the basic suspensions and exemptions granted in the *Pan American-TWA route agreement*, which eliminated effective competitive U.S. flag service in the Guam-Honolulu market, invited Continental/Air Micronesia or any other carrier to apply for exemption authority.

[10] Although World did not submit specific arguments to support its application, it stated it would provide low-fare passenger service similar to the proposals submitted in the *Transcontinental low-fare route proceeding*, docket 30356.

[11] The cities of Amarillo, Brownsville, Corpus Christi, Dallas, Lubbock, Oklahoma City, and Wichita; the Chambers of Commerce of Amarillo, Austin, Brownsville, Corpus Christi, Dallas, Lubbock, Tulsa, Nashville, Oklahoma City, Oklahoma State, and Wichita; Dallas/Fort Worth Airport Board; Oklahoma City Airport Trust; Tulsa Airport Authority; Texas Tourist Development Agency; Texas Tourist Council; Airline Passengers Association, Inc.; and the North Texas Commission.

to Braniff's application. Trans International neither supports nor opposes it, but states that if the Board is going to consider Braniff's application and motion, it must also give comparative consideration to other applications including its own.[12] United, Northwest, and Pan American oppose the use of show-cause procedures to resolve the issues rasied by Braniff. Moreover, they fear that Braniff's proposals will jeopardize ongoing United States-Japan negotiations. Northwest contends that granting Braniff's request could have an adverse impact on other carriers, and further states that before entering the transpacific market with low fares, Braniff should reduce its fares to South America. Pan American alleges Braniff has inflated its financial results and will actually suffer a substantial operating loss; that Pan American can provide better service thorugh Houston; that Japan will demand unreasonable concessions for approving Braniff's entry; and that Dallas/Fort Worth does not generate enough traffic (3.8 daily passengers) to justify service to Japan.

Braniff filed a consolidated reply to the answers in opposition to its motion for the use of show-cause procedures.[13] It asserts that its operations will be profitable and that the answers have not shown otherwise; that a Houston-Tokyo route is not substitute for a Dallas/Fort Worth-Tokyo route, and that under the "Boston Entry" standard, it is entitled to the issuance of a show cause order.[14]

In support of its motion for expedited consideration, Trans International states that current government policy of allowing scheduled carriers to offer substantially reduced fares is preventing further charter development and places the supplemental carriers at a competitive disadvantage, and that Tokyo and Hong Kong are logical gateways for low-fare service. Northwest, Pan American, United, the Seattle parties[15] and Flying Tiger filed answers. Pan American contends that Trans International's proposed fares are unrealistically low because they do not take into account fully allocated operating costs; and that Trans International is not willing to bear the certificate responsibility of a scheduled carrier, demonstrated by its proposal to reduce frequencies when demand is insufficient.

Northwest claims that low cost transportation is now readily available in the Pacific; that Trans International's proposed operations would jeopardize scheduled carriers' operations through diversion; that the proposal would be acceptable to the Japanese only in return for disproportionate U.S. concessions; and that the institution of low-cost bulk transportation to Pacific points may not be as financially feasible as they are in transatlantic markets.

United and the Seattle parties urge the Board to decide the *Seattle/Portland-Japan Service Investigation*, docket 28655, before acting on Trans International's proposal, since that case involves possible new service between Tokyo and most of the U.S. points TIA seeks to serve. The Seattle parties further state that TIA's proposed fares raise legal questions regarding common fares; that the public benefits of the proposals are somewhat speculative; and that reduced fare proposals are already before the Board in docket 28655.

Flying Tiger's answer to Trans International urges the Board to eliminate all-cargo issues in any hearing resulting from its application.[16]

1. Policy Objective of this Case

The Board's foreign air transportation policy goals were recently set forth in the scoping order for the *United States-Benelux Low-Fare Proceeding*, and need not be repeated at length.[17] Our statements in that order are equally applicable here. We see this proceeding as another opportunity to develop a system of air transportation that places principal reliance on actual and potential competition to determine the variety, quality and price of air service. In other words, it is an opportunity to further the Board's aim of insuring that the consumer and air transportation interests are served by encouraging more effective competition in the marketplace. Consequently, as in the *Benelux* case, we will consider possible awards of new competitive, permissive authority to all fit, willing, and able applicants, and the extent to which such awards encourage the efficiency, innovation and competition deemed to be in the public interest by section 102 of the act. Similarly, although we are emphasizing the possibility of granting multiple awards in this case, we do not now say that such awards will be made here.[18] Instead, as in *Benelux*, we will withhold judgment on that issue until the conclusion of this case.[19]

Several parties submitted arguments that, unlike the situation in the transatlantic market, low-fare service in the Pacific is not feasible. In our judgment, based on the information we now have, low load factors and the consequent excess capacity exist, in part, because high fares have had a dampening effect on consumer demand. Presumably, to increase load factors, carriers can either reduce capacity or stimulate new traffic by lowing fares. At this point, we prefer the latter alternative.[20]

2. Scope of the Case

The scope of the *Transpacific Low-Fare Route Investigation* will include: (1) All points in the United Staes for which applications have been or will be filed,[21] on the one hand, and Hong Kong, South Korea, Taiwan, Singapore, the Philippines, Okinawa, and Japan, on the other; and (2) all points contained in TWA's Route 164.[22]

The focus will be on innovative low-fare services proposed by qualified applicants. The potential for demonstrating economically feasible low-fare operations may be enhanced if the carriers have the flexibility to combine traffic from a number of U.S. points to the Pacific destinations.[23] Hence, the case will encompass any U.S. points

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[12] Citing *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945); *Kodiak Airways* v. *C.A.B.*, 447 F2 341 (D.C. Cir. 1971).

[13] Braniff's reply was accompanied by a motion to file an unauthorized document.

[14] Order 78-4-69, April 14, 1978. By that order, the Board tentatively granted Piedmont's application for entry into Boston without an oral evidentiary hearing, because the proposed service appeared to be economically feasible, potentially beneficial to the traveling public, and would not have a substantial harmful effect on the air transportation system.

[15] The Port of Seattle, City of Seattle, County of King, Seattle Chamber of Commerce, and Puget Sound Traffic Association.

[16] Concurrently, Flying Tiger filed a contingent petition for leave to intervene only if the Board were to include all-cargo authority in this proceeding.

[17] Order 78-6-97, June 13, 1978, p. 5.

[18] In *Oakland*, the Board tentatively adopted, for purposes of that case, a policy of awarding permissive authority to every fit, willing, and able applicant in each market shown to need some service and able to support it.

[19] We encourage the parties and the administrative law judge to explore at the prehearing conference innovative approaches to exhibit material, with a view toward reducing its quantity, eliminating duplication and superfluous detail, standardizing methodology, and focusing only upon the significant facts and assumptions. In addition, the possibility of stipulating facts and eliminating certain types of evidence also should be explored. Order 78-6-97, pp. 6-7.

[20] We do not believe that the establishment of new Pacific gateways will impair existing U.S.-flag carriers' ability to perform their certificate obligations. Of course, parties will not be free to present evidence to the contrary. See order 78-6-97, p. 8, note 24.

[21] All references to the United States include Puerto Rico.

[22] TWA's authority over that route will be in issue for deletion, suspension, or amendment.

[23] In order to insure the utmost flexibility for carriers that might receive authority, we will coterminalize the U.S. and foreign points. Local or fill-up authority between the U.S. points (except stopover rights), however, will not be included since the inclusion of this issue would only serve to complicate and delay the case. Successful applicants are, of course, free to request fill-up authority once they have commenced service.

that applicants propose to serve.[24] We shall examine whether new authority should be permissive.[25] The judge and the parties should examine the feasibility of granting permissive authority to allow the carriers greater flexibility to reallocate resources, or cease operating over a route altogether should market demand shift or prove insufficient, or not to institute service at all.[26]

We have included the north and central Pacific points of Hong Kong, South Korea, Taiwan, Okinawa, the Philippines, and Singapore for several reasons. First, it is logical to include these points since they appear to be receptive to low-fare services. Second, there is very little, and in many cases no, schedule direct U.S.-flag service to these Pacific points from most of the United States. These markets seem underdeveloped, and in many instances dominated by foreign-flag carrier. New services appear to be badly needed. Third, the inclusion of a number of coterminalized points in the Pacific may allow carriers to combine traffic flows and increase carrier operating flexibility and the opportunities for varied service/price options. Finally, these additions could prove to be of great benefit to the consumer, since they are more convenient to much of the Pacific than the primary gateway of Japan.[27]

While we have considered all the arguments to the contrary, we have decided to include Japan within the scope of the case. Admittedly, Japan suffers a shortage of airport capacity, does not appear receptive to multiple U.S.-flag designations, and does not appear enthusiastic about low fares. Indeed, one of the primary objectives of this case is to explore the possibility of developing other new gateways. We cannot ignore the fact, however, that Japan is the largest destination in the Pacific, and certain areas of the United States are not provided with convenient service to it. Thus, including Japan would allow the Board to consider the service needs of the Pacific in one case and obviate expending limited Board resources for Japan at a later date. We hope that the creation and development of new Pacific gateways may contribute to a change of attitude by the Japanese. Should that occur, the services found required would be defined and the authorized carriers could begin them much sooner. Regardless of Japan's position, this case will serve as a vehicle for selecting new foreign gateways, and examine the feasibility of multiple authorizations by carriers providing low-fare service.

The inclusion of Japan should not be permitted to shift the applicants' focus from the primary issues of this proceeding. To insure that this proceeding does not turn into a United States-Japan low-fare case, we direct the administrative law judge to require all applicants requesting authority to Japan to submit two separate proposals, with one excluding that country. This approach will allow the Board the greatest range of choices in deciding this case.[28]

Since we want this proceeding to focus on scheduled service, requests for supplemental authority will not be entertained. That issue is currently being considered in the *Former Large Irregular Air Service Investigation*, Docket 32327, which the Board will process in the next couple of months.[29] Thus, the motions to consolidate Dockets 32411, 32415, 32410, and 32413 with Dockets 32634 and 32635 are denied.[30] Similarly, the motions to consolidate applications for scheduled authority in Dockets 30511, 30510, and 30512 with Dockets 32634 and 32635 are also denied. These applications are limited to transcontinental authority which is outside the scope of this case, and they were consolidated in the *Transcontinental Low-Fare Proceeding*, Docket 30356.[31]

3. Procedure

By order 78-3-8 the Board stated that it would resolve the *Transpacific Low-Fare* case by March 1980. We now expect to render a final Board decision before then. The parties and the Board's staff are requested to proceed with all due speed to insure this.[32] In accordance with our policy statement in PS-76, we find that this case involves important policy issues, and direct the Bureau of International Aviation to submit an options memo, if the judge asks for one, at the date set by the judge for rebuttal exhibits. Finally, because of the importance of the issues involved, we have determined to exercise our right of discretionary review of the judge's decision (see Order 77-11-126, November 23, 1977, at 3).

4. Additional Matters

There are several additional issues that must be resolved in this order. First, the joint petition of Braniff and numerous civic parties in Docket 32225 for an order to show cause is denied. The application raises a number of difficult international relations issues which should be explored in a hearing. Also, considering the institution of this case, and the expeditious treatment we are determined to give it, it does not make administrative sense to handle individual applications like Braniff's piece-meal. This is especially true since we want the opportunity to consider low-fare U.S.-Pacific service in an integrated fashion.

The second matter is the various exemption requests filed by Continental, DHL, Northwest, Trans International and World. We are now considering these. Rather than hold up the expeditious processing of this case, we will handle these applications in a separate order, to be issued shortly.

Third is the question of how environmental issues are to be handled.[33] The Board's pertinent regulation is part 312, which requires a responsible official (§ 312.8) to make an initial environmental determination (§ 312.13). Because the Bureau of International Aviation is the staff component participating in this case as public counsel, we will assign the Director of the Bureau, or his designate, as the official responsible for fulfilling this requirement. Applicants whose applications are consolidated by this order are directed to submit environmental evaluations (§ 312.12) within thirty days of the date the order is served; all other applicants for authority shall file environmental evaluations with their applications (if timely filed), or no later than thirty days after the date of service, whichever is later.[34] To

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[24] This is not to say that we have, at this time, decided that all proposed points will be awarded. The issue of need for service will be determined initially by the administrative law judge upon the record in this case.

[25] Any new service authorizations will be ineligible for subsidy.

[26] Although the primary consideration in this case is transpacific low-fare service with combination aircraft, we are not excluding proposals limited to scheduled all-cargo proposals.

[27] A review of the INS and international O&D data for calendar year 1977 indicates that 75 percent of the United States-Japan traffic have their origin or destination at points beyond Japan.

[28] For example, should problems arise in deciding the issue of service to Japan, the Board could easily sever it from the case and render an early decision on the remaining issues. While this approach does increase the parties' evidentiary burdens, it gives the Board needed flexibility to deal effectively with this problem to insure the institution of any new service found to be required as soon as practicable.

[29] See Order 78-3-159, March 31, 1978.

[30] Since these applications should properly be considered in Docket 32327, they will not be dismissed.

[31] Order 77-6-23, June 7, 1977.

[32] Although we leave the control of procedural dates to the administrative law judge, we urge him or her to issue a recommended decision in sufficient time to give the Board about four months to consider it.

[33] The Board's energy regulation (part 313) contemplates than an energy statement, if required, is to be incorporated within the body of the administrative law judge's decision. This presents no unusual procedural problems, and we perceive no need to modify the requirements of part 313.

[34] Waivers of the requirement to file environmental evaluations will not be entertained. We will delegate to the responsible Board official our power to require from any party any additional environmental in-

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the extent feasible, the Bureau's environmental analysis shall be filed 15 days before the date set for hearing or on the date set for rebuttal exhibitions, whichever is later (§ 312.16).[35]

Finally, there remain several motions and petitions. The motion of DHL to consolidate its application with Docket 32634 is granted. Braniff's motion to file an unauthorized document is granted. Trans International's motion requesting an expedited hearing is granted. Flying Tiger's petition for leave to intervene is granted.

It is therefore ordered, That:

1. A proceeding to be known as the *Transpacific Low-Fare Route Investigation*, Docket 33068, be instituted and set for hearing before an administrative law judge of the Board at a time and place to be designated;

2. The proceeding instituted in paragraph 1 shall include consideration of the following issues:

a. Do the public convenience and necessity require, in whole or in part, that all fit, willing, and able applicants be authorized to engage in foreign/overseas air transportation between (1) any point or points in the United States (including Puerto and Guam), on the one hand, and Hong Kong, South Korea, Taiwan, Okinawa, Japan, the Philippines, Singapore, Thailand, Sri Lanka, and that portion of India which lies south of the 20th parallel, on the other; and (2) any point or points in the United States (including Puerto Rico), on the one hand, and Guam, on the other;

b. If the answer to (a) is negative, in whole or part, do the public convenience and necessity require the authorization of a fit, willing, and able carrier or carriers to engage in foreign/overseas air transportation between (1) any point or points in the United States (including Puerto Rico and Guam), on the one hand, and Hong Kong, South Korea, Taiwan, Okinawa, Japan, the Philippines, Singapore, Thailand, Sri Lanka, and that portion of India which lies south of the 20th parallel, on the other; and (2) any point or points in the United States (including Puerto Rico), on the one hand, and Guam, on the other;

c. If the answer to (a) is negative, in whole or part, and to (b) is positive, in whole or part, which carrier or carriers should be authorized to provide the required service;

d. What terms, conditions, and/or limitations, if any, should be attached to any new authority which may be awarded;

e. Should Trans World Airlines' authority over Route 164 be suspended, deleted, or amended;

3. The applications of Braniff Airways, Inc., Docket 32225; Trans International Airlines, Inc., Docket 31297; Continental Air Lines, Inc., Docket 32018; World Airways, Inc., Docket 32634; Northwest Airlines, Inc., Docket 32730, and DHL Airways, Inc., Docket 32690 be consolidated with Docket 33068, to the extent they conform to the scope of the proceeding instituted in paragraph 1, above;

4. The joint civic/Braniff Airways, Inc. petition requesting that Braniff Airways' application be processed by show cause procedures in Docket 32225 be denied;

5. The motions to consolidate the applications of DHL Airways, Inc., Docket 32690 and World Airways, Inc., Docket 32634 be granted;

6. The motion to consolidate the applications of Richard D. Neumann, California Air Charters, Inc. and Holiday Airways, Inc. d.b.a. Air United States; S.B. Craft and N.Y. Craft d.b.a. Standard Airways; R.W.E. Cox, Jr. d.b.a. United States Overseas Airlines and J.W. North and Holiday Airways, Inc., Dockets 30510, 30511, 30512, 32410, 32411, 32413, 32415 with Dockets 32634 and 32635 be denied;

7. The petition for leave to intervene submitted by Flying Tiger Line Inc. in Docket 31297 be granted;

8. The motion of Trans International Airlines, Inc. requesting an expedited hearing be granted;

9. No authority granted in this proceeding shall be eligible for Federal subsidy; [36]

10. The motion of Braniff Airways, Inc. to file an unauthorized late document be granted;

11. Applications, motions to consolidate and petitions for reconsideration of this order be filed within 15 days from the service of this order and answers thereto shall be filed no later than ten (10) days thereafter; [37]

12. All carriers filing applications in this proceeding shall file environmental evaluations pursuant to § 312.12 of the Board's Procedural Regulations within 30 days from the service date of this order;

13. The Director of the Bureau of International Aviation, or his designee is delegated authority to act under part 312 of the Board's regulations as provided in the text, above;

14. To the extent not specifically granted in this order, all motions, petitions and other requests for relief be denied.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[38]
Secretary.

O'MELIA, MEMBER, CONCURRING STATEMENT:

As was clearly brought out in the opening paragraphs of the present order, the Investigation here being instituted is a parallel case to the *United States-Benelux Low-Fare Proceeding* [1] recently begun. I concurred in that case because it is important to ascertain whether the public convenience and necessity, as traditionally determined, requires new low-fare services between the United States and the Low Countries and, if so, whether these countries will, in fact, accept such services. For the same reasons underlying that position, I favor this inquiry into transpacific services. However, I feel compelled to state anew the reservations I expressed in *Benelux*, which other developments have intensified.

In these last few months, the Board has made a very substantial change in its handling of route cases. Procedurally, the Board has proposed to reduce as much as possible oral hearings and to substitute as much as possible non-oral hearing procedures.[2] More recently, it has revealed its strong desire to reduce evidentiary burdens in route cases and its intention to be much less interested in comparative economic data.[3] Instead of approaching the task of resolving route cases, as has been traditionally done, by looking to each applicant to make its case as to public convenience and necessity and to establish its fitness and its comparatively greater suitability for a particular route, the Board has given the impression of being anxious to reduce or eliminate what had earlier been accepted as desirable route award standards.[4] It has similarly seemed anxious to hand out and to distribute duplicative, nonmandatory route awards to all applicants meeting a certain general threshold level of fitness.[5] In the *Oakland*

Footnotes continued from last page

formation, to grant such other waivers of the requirements of part 312 as may be appropriate and consistent with this order, in his judgment (see § 312.6). The interpretation of the meaning of part 312 (see § 312.5) is delegated to the administrative law judge assigned to the case.

[35] The filing of a draft environmental impact statement, if thought necessary by the responsible Board official, shall be deemed to satisfy the provisions of § 312.16. In such an instance, the final environmental impact statement shall be filed as soon as practicable after the expiration of the comment period, normally 45 days (§ 312.14(e)).

[36] If authority in this proceeding is awarded to a local service carrier, the authority will fall in category II for purposes of subsidy computations.

[37] We delegate to the presiding administrative law judge the authority to consolidate by order any new applications which conform to the scope of this proceeding.

[38] All Members concurred and Member O'Melia filed the attached concurring statement.

[1] Order 78-6-97, June 13, 1978.

[2] See PDR-54, proposing to amend part 302 by adding a new paragraph Q.

[3] *Oakland Service Case*, Order 78-4-121, April 19, 1978, pp. 59-60

[4] See *e.g.*, the elimination of detailed cost accounting evidence in the route award process in the *Florida Service Case*, Order 78-7-128, adopted July 25, 1978.

[5] For example, the Board eliminated the issue of comparative carrier selection in the *Former Large Irregular Air Service Investigation*, Order 78-7-106, July 28, 1978, between competing supplemental air operators. The Board reasoned that supplemental air operations are related directly to demand, so traditional need-for-service considerations do not apply. Therefore an applicant need not provide fitness superior to other applicants as a prerequisite to selection as a supplemental air operator. The

Footnotes continued on next page

Service Case, the board tentatively found that a multiple permissive awards approach was preferable to granting mandatory awards to selected carriers,[6] and in the *Chicago Midway Low Fare Proceeding*[7] it essentially implemented what had before been a tentative finding. In *Benelux* the Board pressed its new policy into the international arena, by making it the lead issue in that case. At each turn of the turnstile, I have—although with some hesitancy—expressed my reluctance to ride the roller coaster of non-statutory deregulation.

However, despite those reservations, I have and will continue to support and to advocate the institution of cases that offer the prospect of lower fares and the keenest level of service competition. In the present case, I feel the Board is correct in deciding that North and Central Pacific markets should now be examined. Comparatively, the area receives much poorer service than the transatlantic market, at much greater cost. The low traffic levels make us question whether high fares have stifled traffic growth. In addition, the scope of this case will enable the Board to consider means of shifting the focus of Pacific travel away from Tokyo; there may be tremendous benefits to the public in doing so. My concerns are not with our objective, but with our approach.

My principal reservation is over the inclusion of the multiple permissive authority concept in this case. My concern on this issue was stated in my concurring statements in the *Oakland Service Case*, and in the *United States-Benelux Low-Fare Proceeding*, and need not be repeated here. It should suffice to say that the multiple permissive awards policy is still before the courts and its legality has not yet been determined. Until it is sustained by a court of law, we should be careful not to interject it routinely into every route proceeding. We should be careful to apply the concept only after an analysis of the various alternatives available in a specific case and after a determination that in the particular circumstances of that case it is the best approach. Moreover, the Board should make its determinations on the basis of the evidentiary record developed before the administrative law judge, rather than on the basis of argumentation—whether made by staff components or outside elements—that has not been subjected to examination in a public hearing. We should, in addition, be cognizant of the possible adverse consequences this novel assertion might have in international air transport in making our determinations.

Second, as I mentioned in *Benelux*, we should not proceed to a final decision until we have carefully analyzed and evaluated the effect of our proposed action on our bilateral aviation relations. This analysis must include consideration of the impact of multiple permissive awards on our network of air transport agreements throughout the world. In my dissent in the *Seattle/Portland-Japan Service Investigation*,[8] I stated my view that the diplomatic international problems created by the proposed award were not adequately addressed by the Board in its Opinion. I trust that that will not occur here. It is disturbing enough that this investigation will be something of an after-the-fact analysis of whether the award we made to United Air Lines in the *Seattle/Portland-Japan Service Investigation* was required by the public convenience and necessity.

I mention these concerns not to derail the Board in its efforts; rather, I do so only because I fear that questionable procedures or concepts may delay or impede our achieving the objectives we seek in our air transport policy.

RICHARD J. O'MELIA.

[FR Doc. 78-22205 Filed 8-8-78; 8:45 am]

Footnotes continued from last page

result is essentially the same as achieved with a multiple permissive awards policy in scheduled service cases. Moreover, it is difficult to reconcile the predicate of the Board's finding in that case of public need for such award in the face of recent experience of important supplementals—withdrawing from service, falling into bankruptcy, or immersed in acquisition proceedings.

[6] Order 78-4-121, April 19, 1978, pp. 34-35.

[7] Order 78-7-40, July 12, 1978.

[8] Order 78———, adopted June 14, 1978, Docket 28655. (This Opinion and Order is presently at the White House for Presidential review, and thus has not been finalized nor assigned an order number.)

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

CASE WESTERN RESERVE UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pusuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00154. Applicant: Case Western Reserve University, University Circle, Cleveland, Ohio 44106. Article: Automatic recording spectropolarimeter, Model J40A. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: The article is intended to be used for studies of proteins and synthetic polypeptides (also nucleic acids). The circular dichroism spectra of the petitides and their complexes with noncovalently bonded molecules will be investigated. The objectives of the experiments to be conducted are:

1. To develop quantitative methods of assessing the structure of proteins in solution,
2. To study subtle changes of the environment of aromatic residues,
3. To study protein subunit complexes and protein complexes with polysaccharides and nucleic acids, and
4. To compare predicted and experimental structures.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a sensitivity limit at 185 nanometers (nm), 500 nm and 700 nm of 8 millidegrees (m°) noise, 0.5m° noise, and 1.5m° respectively plus high frequency switching (50,000 times/second) between right and left polarized light. The Department of Health, Education, and Welfare advises in its memorandum dated June 28, 1978 that (1) the capabilities of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22154 Filed 8-8-78; 8:45 am]

[3510-25]

CORNELL UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of th Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00186. Applicant: Cornell University, Department of Biochemistry, Wing Hall, Ithaca, N.Y. 14853. Article: Xenon arc lamp system and accessories. Manufacturer: Photochemical Research Association Inc., Canada. Intended use of article: The article is intended to be used for the investigation of binding of ligand (e.g., Oxygen [O_2], carbon monoxide [CO]

or nitric oxide [NO] to hemoglobin as well as protein conformational changes of hemoglobin. All the experiments will involve flash photolysis in which a laser pulse is used to remove ligand from hemoglobin. These investigations are directed toward obtaining a clearer understanding of cooperative effects observed in the binding of ligand by hemoglobin.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purpose as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides greater stability (0.1 to 0.5%) with its optical feedback system and brightness (more than 5 times that available with vertical mounted sources). The Department of Health, Education, and Welfare advises in its memorandum dated June 28, 1978 that (1) the features of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus that provides the pertinent features of the foreign article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22155 Filed 8-8-78; 8:45 am]

[3510-25]

DHEW/NIH/NHLBI-IE/LEA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Acts of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00176. Applicant: DHEW/NIH/NHLBI-IR/LEA, Building 10, Room 5N204, 9000 Rockville Pike, Bethesda, Md. 20014. Article: LKB 2128—010 ultrotome IV ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section biological specimens which have been embedded in hardened epoxy resins for ultrastructural studies of normal and abnormal animal tissues and the development of new techniques in quantitative electron and light microscopic autoradiography.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a cutting speed range of 0.1 to 50 millimeters/second (mm/sec). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm/sec. We are advised by the National Bureau of Standards (NBS) in its memorandum dated June 29, 1978 that (1) cutting speeds in the excess of 4 mm/sec. are pertinent to the applicant's research studies and (2) the domestic instrument does not provide the pertinent feature. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22156 Filed 8-8-78; 8:45 am]

[3510-25]

IDAHO STATE UNIVERSITY, ET AL.

Notice of Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, by August 29, 1978.

Regulations (15 CFR 301.9) issued under the cited act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00257. Applicant: Idaho State University, 921 South Eighth Avenue, Attention: Purchasing Box 8219, Pocatello, Idaho 83209. Article: 200 (each) Longworth small mammal traps, complete units with trap and nest box and accessories. Manufacturer: Penlon Ltd., United Kingdom. Intended use of article: The article is intended to be used to capture and release rodents to obtain a description of the seasonal and yearly changes in population size, birth and death rates in natural populations of the rodents in high desert habitat. Application received by Commissioner of Customs: June 6, 1978.

Docket No. 78-00258. Applicant: Department of Commerce, National bureau of Standards, 325 South Broadway, Boulder, Colo. 80303. Article: Model A7 automatically balanced precision resistance bridge and accessories. Manufacturer: Automatic Systems Laboratory, United Kingdom. Intended use of article: The article is intended to be used for the investigation of thermodynamic properties of pure fluid and fluid mixtures. The bridge will automatically balance itself to provide very accurate temperature readings of a platinum resistance thermometer thermally attached to the cell of a pressure-volume-temperature apparatus. The readings will be used as input to a computerized data taking system and will also allow the computer to very accurately stabilize and control the temperature of the sample cell. Application received by Commissioner of Customs: June 6, 1978.

Docket No. 78-00260. Applicant: University of Utah, Salt Lake City, Utah 84112. Article: H-33 Centrifuge with pneumatic motor, Model C5-33, Mix-1-2L mixer unit and accessories. Manufacturer: MEAB Metallextraktion AB, Sweden. Intended use of article: The article is intended to be used to investigate the recovery of metal values (such as copper, nickel, uranium, and other important metals) from

electrolyte solutions using liquid-liquid (solvent) extraction. The article will also be used to expand the already well-recognized hydrometallurgy program at the university. Laboratory experiments involving the use of the article will be incorporated into regular undergraduate and graduate level courses Met. E. 570L: Hydrometallurgical Laboratory and Met. E. 674: Advanced Mineral Processing. Application received by Commissioner of Customs: June 6, 1978.

Docket No. 78-00264. Applicant: Colgate University, Hamilton, N.Y. 13346. Article: Scanning microdensitometer, Model M85 and accessories. Manufacturer: Vickers Ltd., United Kingdom. Intended use of article: The article is intended to be used for measurements of the biologically active concentrations of hormones. The primary field of interest is the circadian rhythms of hormones involved with reproductive cycles especially as they are affected by photoperiods, temperature, and pineal gland. These studies normally culminate in research papers published in the field. In addition, the article will be used for educational purposes in the courses Biology of Reproduction (Biol. 365), Experimental Endocrinology (Biol. 361-362), and Chronobiology (Biol. 364). Application received by Commissioner of Customs: June 7, 1978.

Docket No. 78-00266. Applicant: Cold Spring Harbor Laboratory, P.O. Box 100, Cold Spring Harbor, N.Y. 11724. Article: Electron microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used as the primary tool in the examination of the organization of chromosomes and viruses. Primary focus will be on the patterns of RNA transcription, processing, and splicing of the DNA tumor viruses: adenovirus, simian virus 40, and their hybrids. Application received by Commissioner of Customs: June 8, 1978.

Docket No. 78-00268. Applicant: The University of Texas Health Science Center, Department of Cell Biology, 5323 Harry Hines Boulevard., Dallas, Tex. 75235. Article: Electron microscope, Model JEM 100CX and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in high resolution biological studies of cell membranes and other cellular organelles. In addition, freeze etch replica's will be studied as well as critical point dried whole cells. Most of the materials studied will be mammalian tissue associated with the nervous system, including nerve and muscle cell cultures. Also studied will be the distribution of proteins which reside within the cell membranes. Various antibody and protein tagging techniques will also be investigated. Experiments will be conducted to (1) resolve the relationship of microtubules and microfilaments in nerve and muscle cell cultures, (2) to study changes in the functional activity states of membranes, and (3) to study membrane changes during induced cell and tissue transformation. The article will also be used by graduate students, post-doctoral fellows and faculty members in Graduate School of Biomedical Sciences. Application received by Commissioner of Customs: June 9, 1978.

Docket No. 78-00269. Applicant: University of South Carolina, Department of Geology, Columbia, S.C. 29208. Article: Isotope ratio mass spectrometer, Model 602D and accessories. Manufacturer: V.G. Micromass, United Kingdom. Intended use of article: The article is intended to be used for studies carried out to investigate the history of Antarctic circulation as recorded in biogenic sediments on the sea floor. Microscopic fossils composed of calcium carbonate will be isotopically analyzed for their $^{18}O/^{16}O$ and $^{13}C/^{12}C$ ratios. The $^{18}O/^{16}C$ and $^{13}C/^{12}C$ ratios of the tests of living foraminifera from plankton tows, fossil foraminifera from deep-sea sediments, as well as coccoliths and benthonic foraminifera from laboratory cultures will be determined to ascertain the magnitude of non-equilibrium fractionation in these forms and its relationship to various environmental parameters. In addition, an investigation will be made of the paleo-hydrographic potential of $\delta^{18}O/\delta^{13}C$ ratios of fossil foraminifera. It is also proposed to derive an emperical relationship between temperature and $^{18}O/^{16}O$ fractionation in pteropods (aragnite) and foraminifera (calcite). Routine analyses of extremely minute quantities of gas for S and N isotopes as well as C and O will be conducted. The article will also serve as an education tool for courses "Geochemistry", "Isotope Geology and Geochronology", "Geochemistry of Salt Marshes" and "Hydrogeology". Application received by Commissioner of Customs: June 9, 1978.

Docket No. 78-00270. Applicant: The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, Tex. 78284. Article: Scanning electron microscope, Model PSEM 500A and accessories. Manufacturer: Philips Electronics Instruments, NVD the Netherlands. Intended use of article: The article is intended to be used for studies of biologic tissues from the heart, blood vessels, kidney, lung, red cells, bone marrow cells and blood cells. Some nonbiologic materials which are used biologically in prosthesis—artificial joints, artificial heart valve, artificial skin—will also be studied with the article. Investigations will be conducted to study the morphologic and elemental perturbations of biologic specimens encountered in various rigorously controlled experimental models. Experiments to be conducted will include the following:

(1) Tissue culture of primate vascular endothelium and smooth muscle cells,

(2) Immunologic localization of complement (C_3) on infarcted myocardial muscle cells and the morphology of infarcted myocardium,

(3) Study of host-cell-bacterial interactions,

(4) Monitoring of a quality control of biochemical fractionation studies in general,

(5) Morphology of microcytic anemia,

(6) Diagnosis and classification of renal disease,

(7) Diagnosis and classification of rare tumors and diagnosis of poorly differentiated tumors, and

(8) Identification and localization of specific elements in sections of tissue utilizing the scanning-transmission mode of operation coupled with x-ray analysis.

In addition, the article will be used in course on electron microscopy for pathology residents, medical and dental students and histology students in the School of Allied Health Sciences. Application received by Commissioner of Customs: June 9, 1978.

Docket No. 78-00271. Applicant: Louisiana State University and Agriculture and Mechanical College, Baton Rouge, La. 70803. Article: LKB 2128-010/Ultratome IV ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section biological materials (including animal, bacteria, virus, parasite, and fungal specimens) for ultrastructural study to reveal the pathogenics and pathology involved in animal cells during infectious or metabolic disorders. Investigation of the ultrastructure of infectious agents for identification of viral agents and for determining virulence or replication properties will be conducted. In addition, the article will be used in graduate courses entitled, "Ultrastructure" and "Cytochemistry" to train graduate students in the use and application of electron microscopy and train various faculty researchers to use the electron microscope in solving individual research problems. Application received by Commissioner of Customs: June 12, 1978.

Docket No. 78-00272. Applicant: U.S. Merchant Marine Academy, Maritime Administration, U.S. Department of Commerce, Steamboat Road, Kings Point, N.Y. 11024. Article: Digital marine radar simulator, Model SY2080. Manufacturer: Solartron

Electronic Group Ltd., United Kingdom. Intended use of article: The article is intended to be used for realistic training of students in the techniques of rapid evaluation of possible danger situations involving large vessels without having to actually board a vessel and get underway. A large number of students will be instructed simultaneously by the use of simulator and radar displays. Application received by Commissioner of Customs: June 12, 1978.

Docket No. 78-11273. Applicant: University of Maryland School of Medicine, 655 West Baltimore Street, Baltimore, Md. 21201. Article: LKB 8800A Ultratome III ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to prepare specimens of neural tissue in several nonmammalian and mammalian vertebrate species for examination at the ultrastructural level. These ultrastructural studies will entail analyses of CNS tissue following experimental neuronal injury in amphibians and mammals using conventional thin section and specialized cytochemical and autoradiographic techniques. Emphasis will be focused upon pathological changes in the spinal cord following transection in mammals and a comparative examination of cellular dynamics during successful regeneration following cord interruption in lower vertebrates. The article will also be used in the training of graduate students involved in the above research. Application received by Commissioner of Customs: June 13, 1978.

Docket No. 78-00274. Applicant: Cornell University, Department of Chemistry, Baker Laboratory, Ithaca, N.Y. 14853. Article: LKB 14800-1 CryoKit and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for preparing thin sections of (a) intestinal mucosa of human, rat, rabbit, and chick species; (b) developing teeth of young rodent; (c) adeno carcinomas and sarcomas from humans and rodents; (d) long bones of rodents including organ cultured explants; (e) mimosa leaves. These preparations will be studied in the ion microscope, and transmission and scanning electron microscopes with particular attention being given to the existence and location of diffusable ions (Na^+, K^+, Mg^{++}, Mn^{++}, Cl^-, P^-). The general goal of the investigation is to further elucidate the specific location and the nature of the cellular involvement of diffusable ions in biological material. Application received by Commissioner of Customs: June 13, 1978.

Docket No. 78-00275. Applicant: Duke University Medical Center, Department of Anatomy, Box 3011, Durham, N. C. 27710. Article: Cryostat and accessories. Manufacturer: MERIC, France. Intended use of article: The article is intended to be used to freeze and maintain at low temperature biological membrane specimens for x-ray diffraction studies. Experiments will be conducted to evaluate the structural effects of freezing biological tissue by comparing x-ray structure before freezing to that after freezing. Application received by Commissioner of Customs: June 13, 1978.

Docket No. 78-00276. Applicant: North Carolina State University/Raleigh, N.C., School of Agriculture and Life Sciences, Department of Crop Science, Box 5151, Raleigh, N.C. 27650. Article: Particulate matter prediction metering equipment. Manufacturer: WD & HO Wills, United Kingdom. Intended use of article: The article is intended to be used for studies of the tar content of tobacco. Experiments will be conducted to reduce tar levels in flue-cured tobacco with the objective of reducing health hazards associated with tobacco. The article paralyzes ground tobacco so that rapid termination can be made on a large number of samples. Application received by Commissioner of Customs: June 16, 1978.

Docket No. 78-00277. Applicant: Midwest Research Institute/Solar Energy Research Institute Division, 1536 Cole Boulevard, Golden, Colo. 80401. Article: Electron Microscope, Model JEM 100 CX/SEG/SQH and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to examine and chemically analyze materials of all kinds—metals, polymers, ceramics, semiconductors, composites, and biological specimens—using magnifications from 10 to more than 300,000 times. Specific uses will involve failure analyses of solar devices, characterization of solar materials under development and support of basic studies by correlating material microstructure with performance. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00278. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., 2010 North Forbes Boulevard, Suite 100, Tucson, Ariz. 85705. Article: Klystron, Model VRB2113A30. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00279. Applicant: Pacific Northwest Laboratories—Department of Energy, P.O. Box 999, Richland, Wash. 99352. Article: COSPEC Model IVB including single gas IVB high sensitivity correlation spectrometer with accessories. Manufacturer: Barringer Research, Canada. Intended use of article: The article is intended to be used for the study of sulfur dioxide and nitrogen dioxide emissions from power plants or any other source. Dispersion and conversion from gas to particular tracking flume over long distances will be investigated. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00280. Applicant: University of California, San Diego, Department of Biology, B-022, La Jolla, Calif. 92093. Article: Electron microscope, Model H-300 and accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used to study biological structures at molecular, cellular and tissue levels. Considerable effort will be focused on the anaysis at many levels of the structure of nucleic acids. A detailed base sequence analysis will be carried out on transfer RNA molecules and the genetic regulatory regions of DNA of both prokaryotic and eukaryotic organisms. The structure of covalently-closed circular DNA form and replicating forms of bacterial plasmids (extrachromosomal genetic element) that are naturally occurring and have been constructed in vitro will be carried out with electron microscopy techniques. Another major project involves the fine structure of the RNA genome in defective animal viral particles and the mechanism of assembly of the bacterial virus 0X174. In addition, the article will be used for educational purposes in the course Bio 204—Electron Microscopy course for students in biology. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00281. Applicant: University of California, San Diego, Department of Biology, B-022, La Jolla, Calif. 92093. Article: Electron microscope, Model H-300 and accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used to study biological structures at molecular, cellular and tissue levels. Considerable effort will be focused on the analysis at many levels of the structure of nucleic acids. A detailed base sequence analysis will be carried out on transfer RNA molecules and the genetic regulatory regions of DNA of both prokaryotic and eukaryotic organisms. The structure of covalently-closed circular DNA form and replicating forms of bacterial plasmids (extrachromosomal genetic element) that are naturally occurring and have been constructed in vitro will be carried out with electron microscopy techniques. Another major project involves the fine structure of

the RNA genome in defective animal viral particles and the mechanism of assembly of the bacterial virus 0X174. In addition, the article will be used for educational purposes in the course Bio 204—Electron Microscopy course for students in biology. Application received by Commissioner of Customs: June 19, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22145 Filed 8-8-78; 8:45 am]

[3510-25]

TEXAS WOMAN'S UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00159. Applicant: Texas Woman's University, Denton, Tex. 76204. Article: UV Laser microbeam cell surgery system and accessories. Manufacturer: BTG Biotechnik GmbH, West Germany. Intended use of article: The article is intended to be used in a research project entitled: "Development of ordered neuronal networks in vitro and of a long-term simultaneous single unit recording capability using fixed-array, photoetched, high density multimicroelectrode surfaces." The laser system will perform three primary tasks: (1) To elliminate specific neurons in tissue culture and to transect specific neuronal processes in order to achieve simple optically defined neuronal networks; (2) to produce adhesion patterns of neuronal adhesion and ordered growth of their processes; (3) to effect controlled and reproducible penetration of thin dielectric layers insulating photoetched circuits in order to produce microelectrodes of desired impedances. The objective of this research project is to identify and solve the technical and nueurobiological problems involved with the development of ordered neuronal networks invitro as well as to establish a new method for the long term simultaneous monitoring of extracellular activity from numerous neurons whose interconnections are all identifiable and under the control of the experimenter. This research will be carried out with graduate students and therefore serve to train them in these new techniques. In addition, the article will be used to support courses being planned under the general heading of "Biophysical Methods in Cell Biology" on both the undergraduate and graduate level.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufacture in the United States.

Reasons: The foreign article provides a one micro focused spot and power densities of the order of 10" watts per square centimeter. The Department of Health, Education, and Welfare advises in its memorandum dated June 28, 1978, that (1) the features of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended uses.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal domestic assistance program No. 11.105, importation of duty-free educational and scientific materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22157 Filed 8-8-78; 8:45 am]

[3510-25]

UNIVERSITY OF ARIZONA HEALTH SCIENCES CENTER

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00185. Applicant: University of Arizona Health Sciences Center, 1501 North Campbell Avenue, Tucson, Ariz. 85724. Article: Echoscope, Multi-Transducer, with accessories. Manufacturer: Ausonics Pty., Ltd., Australia. Intended use of article: The article is intended to be used to generate diagnostic images in breast examinations, testicular examinations, and children's skull and brain. In addition, there is a great deal of diagnostic information which can be gained by this machine in other areas within the body, such as the abdomen, thyroid, and heart, which are not achievable with currently available diagnostic ultrasound instrumentation in this country. Plans are to expand the techniques and anatomical areas of diagnostic ultrasonic imaging. Resident physicians and medical students on the Radiology Service will use the diagnostic ultrasonic images in their training.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a water coupled instrument which provides simultaneous scanning with eight transducers to yield automated, rapid and standardized (with respect to equivalent resolution and grey scale) images. The Department of Health, Education, and Welfare advises in its memorandum dated June 28, 1978 that (1) the capabilities of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended uses.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal domestic assistance program No. 11.105, importation of duty-free educational and scientific materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22158 Filed 8-8-78; 8:45 am]

[3510-25]

UNIVERSITY OF CALIFORNIA—SAN DIEGO

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00169. Applicant: University of California, San Diego, La Jolla, Calif. 92093, c/o Air-Sea Forwarders, Inc., 2375 Air Lane, P.O. Box 948, San Diego, Calif. 92101. Article: Phywe ICP 22 Pulse cytophotometer (ICP 21 plus additional measuring chamber and photomultiplier tube). Manufacturer: Phywe, West Germany. Intended use of article: The article is intended to be used to measure the amount of fluorescence emitted by cells passing through a focused beam of monochromatic light. The article can analyze a heterogeneous population of cells and quantify the number of cells containing a cells constituent that stains with fluorescent dye. Further, if varying amounts of the dye are taken up, a two dimensional hitogram is created with number of cells on the ordinate and quantity of fluorescence on the abiscissa. The experiments to be conducted include the following: (1) Investigation of the effect of hormone and drugs upon the proliferation of lymphocytes, (2) investigation of the effect of chemotherapy upon tumor cells and normal bone, marrow cells obtained from patients and from experimental animals with tumors, (3) biochemical studies of transplanted human tumor cells, and (4) studies of the events that control a cell's entry into the cycle of biochemical activity that results in cell division. The article will also be used for educational purposes in the field of biology, molecular biology, biochemistry and pharmacology.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides accurate detection of fluorescence from individual stained cells and broad-band ultraviolet excitation down to 200 nanometers (nm). The Department of Health, Education, and Welfare advises in its memorandum dated June 28, 1978, that (1) the capabilities of the articles described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus that provides the pertinent features of the article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal domestic assistance program No. 11.105, importation of duty-free educational and scientific materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22159 Filed 8-8-78; 8:45 am]

[3510-25]

UNIVERSITY OF KANSAS MEDICAL CENTER, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5 p.m. in room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00234. Applicant: University of Kansas Medical Center, 39th and Rainbow Boulevard, Kansas City, Kans. 66103. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for conducting the following research: (a) High resolution studies of mineralization of matrix vesicles derived from cartilage and bone cells to determine the crystalline nature of mineral formed and how the biological membranes of the matrix vesicles change during mineralization; (b) freeze-fracture EM studies of unfixed epiphyseal growth plate during growth and mineralization; (c) nature of intracellular junctions in renal tubular epithelial cells in normal and diseased humans; (d) abnormal mineralization of bone in patients with chronic renal disease who are on prolonged dialysis; and (e) ultrastructure of human tumor cells of various types taken at surgery to confirm or establish a new diagnosis not determined by convential light microscopy. In addition, the article will be used to train resident doctors in Pathology to use electron microscopy in their future diagnostic work and graduate students in Pathology for pathological research. Article ordered: March 27, 1978.

Docket No. 78-00244. Applicant: Shriners Burns Institute, 610 Texas Avenue, Galveston, Tex. 77550. Article: Electron Microscope, Model JEM 100CX SEG high resolution and accessories. Manufacturer: JEOL Ltd. Intended use of article: The article is intended to be used for the study of a variety of biological materials including human skin and scars, vascular tissues, endocrine tissues, cell membranes, etc. The ultrastructural and biological aspects of hypertrophic scars will be characterized and compared in studies designed to elucidate the differences between these scars and normal skin. The permeability of capaillaries and venules of the scar tissues to electron dense markers will be examined in a variety of scars of various ages and origins in studies designed to investigate the etiology of hypertrophic scars and keloid formations in man. Article ordered: March 27, 1978.

Docket No. 78-00246. Applicant: Duke University, Durham, N.C. 27706. Article: Electron Microscope, Model EM 9S-2 and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in the study of the normal and pathological structures of the eye. The experiments to be conducted include the evaluation of specimens taken from human eyes during surgery (biopsies) to study the nature of eye diseases. Specifically, specimens will be taken from the inside of the eye during vitrectomy and from diseased corneas that are removed at the time of corneal transplantation. Other animal experiments are planned to study the potential benefits of drugs injected into the eye. In further animal experiments, fibroblasts will be injected into the vitreous cavity to simulate intraocular scar tissue formation as it occurs after eye injury. The objective of all studies is to better understand human eye disease and by simulating these diseases in animal eyes to find appropriate medications to treat them. In addition, the article will be used to teach medical students as well as postdoctoral fellows in electron microscopic techniques. Article ordered: April 21, 1978.

Docket No. 78-00259. Applicant: Hahnemann Medical College, 230

North Broad Street, Philadelphia, Pa. 19102. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to examine biological materials and inorganic particles. The research projects will include: (a) Morphometry of cytoplasmic organelles in liver cell injury, (b) analysis of subcellular differentation in embryonic tissues and tumors, (c) ultrastructural cytochemistry of basement membrane formation, (d) analysis of the structure and function of Legionnaires' disease organism. In addition, the article will be used in the course entitled General and Systemic Pathology for both medical and graduate students. Application received by Commissioner of Customs: June 2, 1978.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal domestic assistance program No. 11.105, importation of duty-free educational and scientific materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22160 Filed 8-8-78; 8:45 am]

[3510-25]

UNIVERSITY OF MARYLAND AT BALTIMORE HOSPITAL AND PROFESSIONAL SCHOOLS, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially §301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00161. Applicant: University of Maryland at Baltimore Hospital and Professional Schools, 660 West Redwood Street, Baltimore, Md. 21201. Article: Universal Cassette for Elmiskop 1/1A without magazine. Manufacturer: Siemens Corp., West Germany. Intended use of article: The article is an accessory to an existing electron microscope which is being used for the instruction of Pathology 712 (Light and Electron Microscopy Laboratory) students in basic research techniques used in electron microscopy with which they are to begin their thesis research program. Application received by Commissioner of Customs: March 6, 1978. Advice submitted by Commissioner of Customs: June 28, 1978.

Docket No. 78-00189. Applicant: Minnesota Department of Health, 717 Delaware Street SE., Minneapolis, Minn. 55440. Article: Hitachi Model HK-6 large angle tilting device with accessories. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used for studies of environmental samples of micro-particulates including asbestos and other mineral particles. The crystal structure of the minerals will be identified through analysis of electron diffraction patterns taken at specific angles of specimen tilt. Application received by Commissioner of Customs: April 14, 1978. Advice submitted by the Department of Health, Education, and Welfare on: June 28, 1978.

Docket No. 78-00200. Applicant: University of California—Lawrence Berkeley Laboratory, L Cyclotron Road Road, Berkeley, Calif. 94720. Article: High Resolution Goniometer. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is an accessory to an existing electron microscope and will be used for observation of thin sections of biological material; blood, bone marrow, lungs, conjuctiva, brain, and neural ganglia of pollutant-exposed animals will be examined. In addition, the hydrocarbon and rubber producing tissue of Guayule will be studied. Changes in morphology, enzyme content and localization membrane relationships, etc. which occur in the cells of these tissues in response to non-nuclear pollutants will be investigated. The influence of magnetic fields on the growth and architecture of the brain and the organization of actin in non-muscle cells, and the expression of viruses associated with atherosclerosis and cancer will be studied. Application received by Commissioner of Customs: April 14, 1978. Advice submitted by the Department of Health, Education, and Welfare on: June 28, 1978.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health, Education, and Welfare (HEW) in the respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

(Catalog of Federal domestic assistance program No. 11.105, importation of duty-free educational and scientific materials.)

[FR Doc. 78-22161 Filed 8-8-78; 8:45 am]

[3510-25]

WOODS HOLE OCEANOGRAPHIC INST.

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of

the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00196. Applicant: Woods Hole Oceanographic Institution, Water Street, Woods Hole, Mass. 02543. Article: Structural frame for research submersible "Alvin". Manufacturer: TiFab Titanium Ltd., Canada. Intended use of article: The article is intended to be used with the research submersible ALVIN for studies of physical, biological and geological properties of the ocean bottom. Density, salinity, temperature, sound propagation characteristics of seawater, density, hardness, shear strength and compressive strength of ocean bottom soil and rock samples; biological features of ocean bottom plant and animal life will be investigated.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides high strength (can easily support 16.5 tons because it is as strong as stainless steel but half as heavy), remarkable corrosion resistance to almost every known type of corrosion (especially sea water), and lightweight (1.3 tons, twice the weight of aluminium but four times as strong). The National Oceanic and Atmospheric Administration advises in its memorandum dated June 26, 1978 that (1) the features of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus which can provide all the pertinent features of the article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal domestic assistance program No. 11.105, importation of duty-free educational and scientific materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-22162 Filed 8-8-78; 8:45 am]

[3510-13]

National Bureau of Standards

BUILDING TECHNOLGY ADVISORY COMMITTEE

Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that a meeting of the Metric Conversion Subcommittee of the Building Technology Advisory Committee will be held on September 7, 1978, in the office of Ezra D. Ehrenkrantz, Ezra D. Ehrendrantz & Associates, 19 West 44th Street, New York, N.Y. The meeting will convene on September 7, 1978, at 10:30 a.m.

The purpose of this meeting is to review issues relating to metric conversion and formulate for submission to the Building Technology Advisory Committee recommendations for the Bureau's building technology programs.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting.

Further information concerning this meeting may be obtained by contacting Samuel Kramer, National Engineering Laboratory, National Bureau of Standards, Building 225, Room A-151, Washington, D.C. 20234, 301-921-3231.

Dated: August 3, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-22175 Filed 8-8-78; 8:45 am]

[3510-17]

National Telecommunications and Information Administration

ELECTROMAGNETIC RADIATION MANAGEMENT ADVISORY COUNCIL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, notice is hereby given that the Electromagnetic Radiation Management Advisory Council will meet from 9:30 a.m. to 5:30 p.m. on August 30 and from 9 a.m. to 5:30 p.m. on August 31 in Room 540, 1800 G Street NW., Washington, D.C.

The Council advises the Secretary of Commerce on the biological effects of radiowaves and other forms of electromagnetic radiation. First established in the Executive Office of the President, the Council advised the Director of Telecommunications Management from 1968 to 1970, and the Director of the Office of Telecommunications Policy (OTP) from 1970 to 1978. OTP was abolished on March 26, 1978, and most of its functions were absorbed by the Commerce Department's new National Telecommunications and Information Administration (NTIA). The Council reports to the Secretary through NTIA's Administrator, the Assistant Secretary for Communications and Information.

Agenda items for the meeting include discussions of: (1) The impact of the OTP/NTIA reorganization on Council programs; (2) domestic and international activities pertaining to electromagnetic radiation standards; (3) electromagnetic radiation environments and exposure; and (4) future Council actions and work program.

The meeting will be open to the public. Oral questions and comments will be allowed, time permitting. Written questions and comments may be submitted before or after the meeting. Public seating will be available on a first-come, first-served basis. Copies of the minutes will be provided upon request when available.

Inquiries may be addressed to the Committee Control Officer, Mr. Robert Frazier, NTIA, 1800 G Street NW., Washington, D.C. 20504, telephone, 202-395-3102.

Dated: August 4, 1978.

CHERYL C. DODSON,
Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 78-22228 Filed 8-8-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

RALPH QUINLAN

Receipt of Application for Permit

Notice is hereby given that an applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the regulations governing the taking and importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Mr. Ralph Quinlan, QUINLAN MARINE ATTRACTIONS, Route 3 Box 540, Lincolnton, N.C. 28092.

2. Type of permit: Public display.

3. Name and number of animals: Atlantic bottlenose dolphins (Tursiops truncatus), 6.

4. Type of activity: To take six (6) bottlenose dolphins and maintain in a permanent facility.

5. Location of take: Gulf of Mexico in the area of the mouth of the Mississippi River.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian,

who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before September 8, 1978. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, Saint Petersburg, Fla. 33702.

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm St., Gloucester, Mass. 01930.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: August 3, 1978.

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

[FR Doc. 78-22215 Filed 8-8-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

NOTICE OF ISSUANCE OF PERMIT TO TAKE MARINE MAMMALS

On June 14, 1978, notice was published in the FEDERAL REGISTER (43FR 25704), that an application had been filed with the National Marine Fisheries Service by U.S.S.R. Ministry of Fisheries Administration for Conservation and Reproduction of Fish Resources and Regulation of Fishing, Verkhnyaya Kranoselskaya Ulitsa, 17a Moscow, U.S.S.R. 107140, for a scientific research permit to take 200 walrus (*Odobenus rosmarus*) a species under the jurisdiction of the Fish and Wildlife Service, and 100 ribbon seals (*Phoca fasciata*), 200 harbor seals (*Phoca vitulina*), 350 ringed seals (*Phoca hispida*), and 100 bearded seals (*Erignathus barbartus*), species under the jurisdiction of the National Marine Fisheries Service.

Notice is hereby given that on August 3, 1978, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service and the Fish and Wildlife Service jointly issued a scientific research permit for that part of the above taking which deals with the 750 ice seals requested.

The portion of the request relating to walrus as described in the application has been denied on the grounds that the management program established by the State of Alaska would be adversely impacted if an additional take were authorized.

The period August 4-28, which is the time during which U.S. researchers will participate, has been authorized for the activities requested. The permit is available for review in the following offices.

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Director, Fish and Wildlife Service, 18th and C Streets NW., Washington, D.C. 20240; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O., Box 1668, Juneau, Alaska 99802.

Dated: August 3, 1978.

TERRY L. LEITZELL,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 78-22166 Filed 8-8-78; 8:45 am]

[3510-22]

WITHDRAWAL OF PERMIT APPLICATION FOR MARINE MAMMALS

On May 8, 1978, notice was published in the FEDERAL REGISTER (43 FR 19700), that an application had been filed with the National Marine Fisheries Service by Mystic Marinelife Aquarium, Mystic, Conn. 06355, for a public display permit to take four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*).

Notice is hereby given that Mystic Aquarium has requested to withdraw the application, and that the request to withdraw was acknowledged and accepted without prejudice by the National Marine Fisheries Service on August 3, 1978.

Dated: August 3, 1978.

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

[FR Doc. 78-22167 Filed 8-8-78; 8:45 am]

[3710-92]

DEPARTMENT OF DEFENSE

Department of the Army

SHORELINE EROSION ADVISORY PANEL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Shoreline Erosion Advisory Panel on September 20-22, 1978.

The meeting will held in the meeting room of the Sherwood Inn, 400 Northeast 45th Street, Seattle, Wash., from 0830 hours to 1530 hours on September 20; from 0815 hours to 1650 hours on September 21, and from 0830 hours to 1040 hours on September 22.

The September 20, 1978 session will be devoted to a briefing and field trip to the Oak Harbor, Washington, shoreline erosion control demonstration site to view and discuss the erosion control devices installed at this site; the September 21, session and September 22, morning session will be devoted to discussions and presentations from the various districts concerned on the status of the Geneva State Park, Ohio, Port Wing, Wis., Kotzebue, Alaska, Fontainebleau State Park, La., and Slaughter and Kitts Hummock Beach, Del. demonstration sites; discussion of alternate sites for Bulls Island, S.C., and Unalakeet, Alaska; status reports from the working groups of the panel; status of the monitoring program; a presentation on erosion at Puget Sound; and information dissemination discussion.

Participation by the public is scheduled for 1600 to 1630 hours on September 21, 1978.

The meeting will be open to the public subject to the following:

1. Since seating capacity of the meeting room at the Sherwood Inn is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda, written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Col. John H. Cousins, Executive Secretary, Shoreline Erosion Advisory Panel, Kingman Building, Fort Belvoir, Va. 22060, telephone 202-325-7000.

Dated: July 25, 1978.

By authority of the Secretary of the Army.

ROME D. SMYTH,
Colonel, U.S. Army, Director, Administrative Management, TAGCEN.

[FR Doc. 78-22202 Filed 8-8-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Release No. 2]

MANDATORY OIL IMPORT PROGRAM

Oil Import Allocations and Licensing July 1-31, 1978

The fee-exempt allocations and licenses issued in accordance with Presidential Proclamation 3279, as amended, during the period July 1-31, 1978, are given in the following tables. The allocations are listed for the appropriate sections of 10 CFR 213 under which the allocations are made.

Also published is a tabulation of the fee-paid crude oil and product licenses and a listing of the sale and reassignment of fee-exempt crude and unfinished oil licenses issued during the month of July 1978.

Release No. 1 was published in the FEDERAL REGISTER on July 20, 1978 (43 FR 31192). The initial release covered the issuance of allocations and licenses for the period from the beginning of the current allocation year, May 1, 1978, through June 30, 1978. The releases will continue to be issued on a monthly basis.

Dated: August 2, 1978.

GEORGE E. HALL, Jr.
Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

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Table and Title

1—Sales of fee-exempt licenses, 10 CFR 213.22.
2—Fee-exempt allocation for imports of Canadian oil based on exchange for domestic oil, 10 CFR 213.28(b).
3—Fee-exempt allocations based on new, expanded, and reactivated refining capacity, 10 CFR 213.29.
4—Fee-paid licenses issued, 10 CFR 213.35.
5—Fee-exempt licenses issued as a result of decisions and orders from the Office of Hearings and Appeals.

U.S. DEPARTMENT OF ENERGY OFFICE OF OIL IMPORTS ALLOCATION JULY 1-31, 1978

TABLE 1.—*Oil import licenses sold pursuant to sec. 213.22(d)*

Seller	Buyer	Date	Commodity	Barrels sold
DISTRICT I-IV				
Amoco	Union Carbide	July 6, 1977	Unfinished	103,778
DISTRICT V				
Union Carbide	Texaco	July 14, 1977	Crude	39,420
do	do	do	do	39,420
do	do	do	do	18,284

TABLE 2.—*Canadian crude oil—Exchange of material not allocated under pt. 214. sec. 213.28(b)*

Company	Address	Exchange volume licensed total barrels
Ashland Oil	Ashland, Ky	1,095,000

TABLE 3.—*Crude and unfinished oils—refinery sec. 213.29*

Company	Plant location	On-stream date	1977 inputs B/CD	Allocation total barrels
Refinery Development Inc	Aransas Pass, Tex	Jan. 1, 1978		238,498

TABLE 4.—*Fee-paid licenses issued sec. 213.35*

Company	Date	License quantity total barrels
FINISHED PRODUCTS—PREPAID		
Sunchem (division of Sunoco)	July 5, 1978	40,000
Douglas J. Fletcher, Jr	do	260
Tejas Gas Corp	do	4,333
Industrial Solvents	do	40,000
Good Hope Industries	July 6, 1978	2,500
Antar Marine London	do	200
Douglas Fletcher	July 13, 1978	520
Charter Chemicals	do	10,800
Asiatic Petroleum Co	do	1,000,000
Metropolitan Petroleum	do	793,650
Airco Welding Products	July 20, 1978	13,500
Finachem Canada	July 24, 1978	35,000
Ashland Oil Co./Allied	July 25, 1978	250,000-
Howard C. Maxson	do	20
Non-Fluid International Ltd	July 26, 1978	126
CRUDE OIL—BOND POSTED		
Exxon Corp	July 5, 1978	15,000,000
Amoco Oil Co	do	5,000,000
Do	do	5,000,000
Do	do	5,000,000
Do	do	5,000,000
National Cooperative Refining Association	do	645,000
Texaco, Inc	July 12, 1978	2,400,000
Do	do	1,100,000
Do	do	7,300,000
Do	do	6,000,000
Marathon Oil Co	July 13, 1978	5,000,000
Koch Industries, Inc	do	1,300,000
Chevron U.S.A., Inc	July 17, 1978	5,000,000
Gulf Oil Co., U.S	July 18, 1978	10,000,000
Farmland Independent	July 20, 1978	3,000,000
Occidental Petroleum Co	do	841,187
Ashland Oil, Inc	do	5,000,000
FINISHED PRODUCTS—BOND POSTED		
Exxon Corp	July 5, 1978	6,000,000
Texaco, Inc	July 12, 1978	3,000,000
Metropolitan Petroleum	July 13, 1978	793,650
Lakehead Pipeline	July 18, 1978	200,000
Petro Tex Chemical	July 20, 1978	50,000
Chevron, U.S.A.	July 24, 1978	1,500,000
Shell Oil Co.	do	1,000,000

TABLE 5.—*Fee-exempt licenses issued as result of decisions and orders of the Office of Hearings and Appeals*

Company	Date	Commodity	Barrels
Champlain Petroleum	Apr. 21, 1978	Crude	1,120,251
Irving Oil Corp	July 5, 1978	Residual	2,602,285

[FR Doc. 78-21978 Filed 8-8-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

ALGONQUIN GAS TRANSMISSION CO.

[Docket No. RP72-110]

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

AUGUST 2, 1978.

Take notice that Algonquin Gas Transmission Co. (" Algonquin Gas"), on July 14, 1978, tendered for filing 43d Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1.

The above-mentioned tariff sheet is being filed pursuant to Algonquin Gas' purchased gas cost adjustment provision set forth in section 17 of the general terms and conditions of its FERC Gas Tariff, First Revised Volume No. 1. The rate adjustment amounting to a net decrease of $.0139 per MMBtu in Algonquin Gas' sales rates under applicable rate schedules is being filed to amortize the balance in Algonquin Gas' unrecovered purchased gas cost account.

The proposed effective date of the revised tariff sheet is September 1, 1978.

A copy of this filing is being served upon all affected parties and interested State 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 §§ 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 August 21, 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. 78-22194 Filed 8-8-78; 8:45 am]

[6740-02]

[Docket No. ER76-495; Opinion No. 19, (Phase II)]

Carolina Power & Light Co.

Opinion and Order Affirming in Part and Reversing in Part Initial Decision and Establishing Just and Reasonable Rates

AUGUST 2, 1978.

Harry A Poth, Jr., Robert T. Hall, III, William E. Graham, Jr., and Charles B. Robson, Jr., for Carolina Power & Light Co. Thomas J. Bolch and William T. Crisp for North Carolina Electric Membership Corp. and Four County Electric Membership Corp. Hugh Q. Wells for North Carolina Electric Membership Corp. James N. Horwood, Daniel J. Guttman, Francis E. Francis, Peter K. Matt, Louis B. Meyer and David R. Strauss for ElectriCities of North Carolina and the cities of Bennettsville and Camden, S.C. Cyril S. Wofsy, James T. McManus, Jon B. Alper, Kristina Nygaard and Eugene R. Elrod for the staff of the Federal Power Commission.

This proceeding is before the Commission on exceptions to an initial decision issued September 7, 1977.[1] The proceeding involves a filing made by Carolina Power & Light Co. (CP&L) on January 30, 1976, for a new resale service schedule RS-11 applicable for sales to its wholesale customers and intended to increase its revenues by approximately $33.57 million for the 12-month period ending December 31, 1976. The increase was allowed to go into effect subject to refund on May 1, 1976, pending hearings thereon and determination of the reasonableness of the proposed rate and revenue changes.

The base rates here in issue have since been replaced by a further proposed increase filed by CP&L on June 29, 1977, in docket No. ER77-485 by which the company seeks an additional $10.4 million annually. Consequently, we are dealing in this decision with the appropriate rates for a locked in period of 20 months' duration, commencing May 1, 1976 and ending December 29, 1977, when the superceding rates became effective subject to a refund requirement.

Exceptions to this initial decision and replies to exceptions have been filed by staff and all parties to the proceedings. Issues not discussed herein either have not been excepted to or, having been considered by us on our review of the record, have been found properly decided by the administrative law judge.

I. COST OF SERVICE

A. WORKING CAPITAL

The administrative law judge denied CP&L's request for an allowance for cash working capital for inclusion in its rate base equal to 45 days estimated expenditures for operation and maintenance (one-eighth the annual amount less purchased power cost.) Instead, he accepted a lead-lag study prepared by an ElectricCities witness, to which he then made various adjustments and concluded that a 2-day allowance would be adequate.

The formulary method for determining a proper working cost allowance has been approved by the Commission in numerous elecrtric rate cases[2] and, over the years, has been found to produce a reasonable approximation of the need for a cost working capital allowance without the impediment of extended controversy regarding the numerous components involved in a properly performed lead-lag study.[3] As expressed in the *Public Service Commission of Indiana* case, "[t]he management of rate cases demands some concession to conventions based on sound business practice." [4]

CP&L, both in its briefs and in its exceptions, has listed a number of deficiencies to the lead-lag study and even its sponsor admits that the study is "not precise."[5] We have reviewed the study submitted in this case and it is our conclusion that the 2-day lag balance computed by the law judge is sufficiently questionable that no reliance can be placed thereon. Accordingly, we reverse the law judge's determination on this issue and allow the amount requested by the company.

The intevenors have proposed the use of tax accruals as a credit to cash

[1] The proceeding began before the former Federal Power Commission. Pursuant to the Department of Energy Organization Act, it is now before this Commission. See section 402(a) and 705(b) of that statute. See also the joint regulation of October 1, 1977, entitled "Transfer of Proceedings to the Secretary of Energy and the FERC." 10 CFR 1000.1. Accordingly, the term "Commission" refers to the Federal Power Commission when used with respect to the period prior to October 1, 1977, and to this Commission when used otherwise.

[2] See, e.g., *Union Electric Company*, 47 FPC 144, 175

[3] *Idaho Power Company*, 46 FPC 384, 425 (1971).

[4] Opinion No. 783 —— FPC ——, issued November 10, 1976, mimeo p. 33.

[5] Brief opposing exception, p. 15.

working capital as here allowed. Such an offset has been rejected in a number of cases[6] and we continue to believe that such action is not appropriate. In addition, we affirm the law judge's decision to deny the request for an additional allowance for compensatory balances on the bases, first, that any need therefor is more properly comprehended either in the rate of return allowance or in a decision fixing the proper accrual rate for the allowance for funds used during construction (AFUDC)[7] and, secondly, that CP&L has not shown that a commitment to maintain compensatory balances is a sine qua non to its ability to secure short-term loans. Also, no evidence was submitted that CP&L does in fact maintain the claimed amount of compensatory balances.

Although we believe that the formulary method continues to be appropriatre for the determination of a cash working capital allowance, we are aware that the existing formula has been followed for many years without modification (see *Interstate Power Company*, 2 FPC 71, 85 (1939); *Chicago District Electric Generating Corp.*, 2 FPC 412, 424 (1941); *Pennsylvania Water and Power Company*, 8 FPC 1, 74-76 (1949)), or even much consideration as to whether it continues to represent a reasonable compromise in light of current utility practice in the provision of services and the rendition and payment of bills. We believe a reexamination is overdue and are therefore instructing our staff to initiate a review forthwith and, if so indicated, to propose a rulemaking proceeding looking to the adoption of a revision in the existing formula.

B. PLANT IN SERVICE

CP&L objects to the presiding judge's decision to calculate plant in service by the use of 13 monthly balances rather than on the basis of the beginning and end of year balances. The fact, as pointed out by CP&L, that our rate filing requirements specify the inclusion of beginning and year-end balances and that the Commission has used this method on occasion in ascertaining the amount of plant in service is not determinative. The filing requirements do not control the decision as to which of the methods considered produces the more accurate results. The evidence here indicates that the 13 monthly balances results in a more accurate matching and the use of this method is affirmed.

C. EXPENSES

(1) *Salvage rate.* Again, we agree with the initial decision that the salvage rate for CP&L's steam production plants should be based on the average of its actual experience in the period from 1961 to 1974, i.e., a 12 percent net salvage rate rather than on the judgment by the company's witness of a 2 percent rate. Any reduction in the salvage rate of the magnitude proposed would require substantially greater support than has been provided by CP&L, particularly in light of the company's most recent experience of a high percentage of net salvage (exhibit 120).

For nuclear production plant, the company requested a negative 10 percent salvage factor for Accounts 321, Structures and Improvements, and 322, Reactor Plant Equipment.[8] The company sought to justify the request primarily by reference to the long time period and expenses involved in decommissioning nuclear plants. Since the widespread growth of nuclear generating facilities is a relatively recent occurrence, there is little hard evidence on which to establish a proper salvage rate for nuclear production plant. Pending further developments in this field we shall adopt the law judge's decision to base the depreciation expense for these properties on a zero salvage factor, without prejudice to a redetermination of this item when information becomes available.

(2) *Service life.* For nuclear production plant CP&L used a 25-year service life; ElectriCities and EMC recommended a 30-year service life. The administrative law judge selected the 25-year life along with a zero salvage factor. As with the preceding determination empirical data concerning nuclear plant depreciation rates is almost totally lacking. Consequently, we will permit the 25-year period as representating a reasonable estimation at this time. If, in the future, it develops that a 4 percent annual depreciation rate is no longer appropriate, an adjustment will be made to account for any significant under or over accumulations.

CP&L used a 30-year expected service life in computing the depreciation rates for certain of its steam production plants. The law judge held that "there is inadequate record evidence in this proceeding upon which to premise a finding that it is reasonable to conclude that a 30-year expected service life for the plants involved should supplant the previously established 33-year service life, and to that extent CP&L has failed to sustain its burden of proof." (ID. p. 43). CP&L's previously effective depreciation rates for steam production plants was not the 33 years stated in the initial decision but was 35 years, as shown in its form 1 for 1971 when the rate was established. We agree with the law judge that on this record CP&L has not justified a change in the rate previously established. Moreover, it is clear that the reference to a 33-year depreciation period was an error by ElectriCities' depreciation witness and was carried forward inadvertently throughout the conduct of the proceeding. Since no change has been justified, CP&L will be required to continue to base the depreciation for these plants on a 35-year service life.

By orders issued in this proceeding on February 27, 1976 and April 12, 1976, CP&L was permitted to charge increased rates subject to refund based on its proposed changed depreciation rates rather than these previously effective. As noted in the February 27 order, "the suspension of such [increased] rates permits this Commission after a hearing to prescribe the proper depreciation level and afford the ratepayers protection from excess depreciation charges by requiring a appropriate refunds." Having now determined that no change in the depreciation rate is warranted on the evidence submitted, CP&L will be required to calculate the refund on the basis of the prior depreciation rate.

II. RATE OF RETURN

A. DEFERRED JOB DEVELOPMENT INVESTMENT TAX CREDIT

CP&L seeks to include the full $46,896,915 balance of its accumulated deferred investment tax credit (ADITC) in the common equity portion of its December 31, 1976 capitalization. The law judge approved the company's proposal for two reasons: (1) An "information letter" issued by the Acting Chief, Engineering and Valuation Branch of the Internal Revenue Service to the chairman of the New Mexico Public Service Commission interpreting section 46(f) of the Internal Revenue Code as mandating an allowance on ADITC "not less than that considered applicable to common equity"; and (2) the FPC's opinion No. 731 in *Kansas-Nebraska Natural Gas Company*,[9] where the company was allowed to include ADITC in the equity component of its capitalization. All parties (except, of course, CP&L) have objected to the law judge's conclusion.[10]

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[6] *Florida Gas Transmission Co.*, opinion No. 611, 47 FPC 341 (1972); *Sierra Pacific Power Co.*, opinion No. 730, —— FPC ——, issued May 15, 1975; *Louisiana Power and Light Co.*, opinion No. 813, —— FPC ——, issued July 21, 1977.

[7] This issue was severed for the proceeding by order issued May 6, 1977, and is the subject of a separate initial decision dated January 9, 1978. The matter currently is under review by the Commission.

[8] These items account for approximately 68 percent of the depreciable property associated with an entire nuclear plant.

[9] Docket No. RP72-32, issued May 16, 1975.

[10] On July 6, 1979, counsel for ElectriCities filed a motion to lodge decision of the North Carolina Utilities Commission relating to this issue. The motion is denied. The record before us is sufficient for our decisional pur-

Footnotes continued on next page

The law judge's determination will be reversed. First, on the matter of the IRS information letter, it is our opinion that the statements made therein do not represent a correct interpretation of the requirement of section 46(f).[11] Although an information letter is entitled to consideration, it is not defined as an "official interpretation" by IRS [12] and is not designed to apply authoritative principles or statutory requirements to specific factual situations. Further, the position taken in the information letter is totally contrary to the IRS regulations proposed in 1972 in conjunction with the predecessor investment tax credit provision.[13] Section 1.46-5(b)(3) of the proposed regulations provides:

[a]ssigning a "cost of capital" rate to the amount of such [ADIT] credit which is less than the permissible *overall rate of return* (determined without regard to the credit would be treated as, in effect, a rate base adjustment. What is the overall rate of return depends upon the practice of the regulatory body. Thus, for example, an overall rate of return may be a rate determined on the basis of *an average or weighted average of allowable rates of return on investments by common stockholders, preferred stockholders, and creditors.* (emphasis added.)

The emphasized language supports the contention by staff and intervenors that ADITC should be reflected proportionately in CP&L's capital structure and that the return allowed on ADITC should be measured by the overall rate of return rather than the higher common equity rate of return.

Nothing in section 46(f) requires that ADITC must be added to common equity. All the code provides is that the tax savings from the investment tax credit cannot be flowed through (i.e, the cost of service can be reduced by no more than a "ratable portion" of the credit) and that the balances cannot be deducted from the rate base. The presentations by staff and the intervenors are consistent with these requirements. The current investment tax credit is normalized and the ADITC balances are neither deducted from rate base nor reflected in the capitalization at zero cost (as is the case with accumulated deferred Federal income tax).

CP&L's witness based his interpretation of the statutory requirement on an excerpt from a House committee report. We agree with the argument by ElectriCities that Congress did not intend in its enactment of section 46(f)(2) to require the allowance of an equity return on ADITC. Rather, it appears clear that a sharing of the benefits was intended and that such sharing is most properly accomplished—absent the possibility of other considerations, as we next discuss—if the company is permitted an opportunity to earn the overall rate of return on the accumulated balances.[14]

We come now to the second reason given by the law judge for his determination, namely the *Kansas-Nebraska* holding. Although the decision was not limited in express terms to the particular company there involved, it is our opinion that the fact that Kansas-Nebraska was (and is) solely a natural gas company renders full reliance on that holding inappropriate. Certain "short-supply" products are accorded unique tax treatment by the Internal Revenue Code. Upon a determination by this Commission that the domestic natural supply of a particular commodity is inadequate to meet the demand section 46(f) of the Code requires that the tax credit be disallowed if the taxpayer's rate base is reduced by a portion of the credit regardless of whether there is any restoration to the rate base.

In promulgating section 46(f) of the Code, Congress was particularly concerned with the rate base treatment of the tax credit in the case of the short-supply commodities. With regard to such products the paramount function of the tax credit is to encourage companies to expand supplies of the commodity in question. This goal is promoted by a ratemaking policy that maximizes investment incentive for stockholders as a means of increasing available investment capital.[15]

As noted in opinion No. 731, natural gas is considered to be a short-supply product.[16] Electric power, on the other hand, has not been so characterized.

The policy considerations involved in opinion No. 731 clearly differ from those in the instant case. The ratemaking issues in the present case must be decided on their own merits and on the basis of the most just and reasonable ratemaking treatment of ADITC for CP&L. Any determination on this issue must be independent of inapplicable Commission precedent or unofficial pronouncements by employees of the Internal Revenue Service.

Sound ratemaking principles dictate that ADITC not be included exclusively as an addition to common equity since, absent the credit, the Company would be compelled to obtain equivalent funds from all sources comprising its capital structure. Thus, CP&L's proposed treatment of ADITC is inconsistent with the market realities of capital acquisition. Furthermore, although the balance of CP&L's ADITC must remain in its rate base, nothing requires that ADITC earn a return at the common equity rate rather than at the overall return rate. The inclusion of ADITC exclusively in common equity would artificially inflate CP&L's return on investment at the ratepayer's expense and would preclude the ratepayers from sharing in the benefits of the tax credit as Congress intended. The ADITC treatment proposed by Staff and Intervenors would enable the Company to make use of the cost free ADITC balance, while simultaneously earning a significant return on those funds, and is therefore consistent with the intended function of the credit.

As indicated earlier, the law judge included the ADITC in the equity component.

Since, as we have determined, this $46,896,915 ADITC balance, which is represented in the rate base, is not entitled to the equity return, the common equity must be reduced by this amount. The dollars then can either be redistributed proportionately through the Capital structure or the amount can be eliminated entirely; in either case the result is the same. For simplicity we follow the latter course, resulting in the following revised capitalization: [17]

Footnotes continued from last page
pose. We therefore have taken no cognizance of this motion.

[11] Although any investment tax credit provision has been a part of the Internal Revenue Code for more years, the appropriate treatment of ADITC insofar as ratemaking is concerned has not yet been completely delineated, either judicially or by official IRS ruling.

[12] 26 CFR 601.201.

[13] 33 FR 3526, 3528 (February 17, 1972).

[14] The proposition that a sharing of the benefit was intended is clearly shown in the report prepared by the staff of the Joint Committee in Internal Revenue Taxation (General Explanation of the Revenue Act of 1971, H.R. 10947), p. 33, where the statement was made that "[t]he Congress, in general, believed that it was appropriate to permit the regulatory agencies, where they conclude it necessary, to divide the benefits of the credit between the customers of the regulated industries and the investors in the regulated industries." See also S. Rep. No. 92-437, 92d Cong. 1st Sess. at p. 36 (1971).

[15] Id. "The Congress also concluded that where a regulated company furnishes * * * gas * * * by pipeline, it is appropriate (when the regulatory agency involved determines that the natural domestic supply of the product furnished is insufficient to meet present and future requirements of the domestic economy) to permit the entire benefits of the credit to be used as an incentive to encourage expansion or at least maintenance of the supply."

[16] See, FPC order No. 448, *Statement of Policy Determining That The Natural Domestic Supply of Gas Is Insufficient To Meet The Present And Future Requirements Of The Domestic Economy and Prescribing The Account For the Job Development Investment Credit Restored In The Revenue Act of 1971*, 47 FPC 141 (1972).

[17] The table also eliminates an amount of $6,098,440 included in the capitalization at zero cost as representing deferred Federal income taxes, account 281. Since issuance of the initial decision, we have determined that amounts in account 281 will be excluded from the capitalization and are to be deducted from the rate base. See Minnesota Power & Light Co., opinion No. 12, issued April 14, 1978.

Description	Amount	Ratio (percent)	Cost	Weighted cost
Long-term debt	$1,103,463,389	48.85	7.71	3.77
Preferred stock	336,018,400	14.87	8.01	1.19
Common equity	819,556,444	36.28		
Total	2,259,038,233	100.00		

B. *Return on Common Equity*

The initial decision adequately summarizes the various considerations relevant to the determination of a reasonable return on equity and the evidence submitted by the parties in support of their claims. We agree with the law judge that the method employed by CP&L's witness Langum in fashioning his comparative investment study, particularly his wholesale elimination therefrom of companies deemed "financially sick and unsuccessful," and of all companies where AFUDC was half or more of net income, results in a distorted sampling and produces a result which is not consistent with the *Hope* and *Bluefield* standards. Consequently, the 13.50-13.75 percent return on equity suggested therein cannot be sanctioned.

Staff recommended 12.50 percent on equity based on a "comparative cost approach," EMC advocated 12.25 percent on equity via a discounted cash flow (DCF) analysis, and ElectriCities recommended 11.0 percent in equity, both on a DCF study and a comparable earnings analysis. The law judge determined that both Staff's recommendation and that submitted by ElectriCities resulted in "point(s) within the zone of reasonableness"; however, he placed no reliance on the DCF studies, merely citing cases where similar analyses had been rejected.

Recently, in our decision in *Minnesota Power & Light Co.*, opinion No. 12, issued April 14, 1974, we had occasion to consider in detail the arguments both for and against many of the more traditional formulations used for the determination of a fair return and went on to express the belief that "there must yet be developed methodologies in addition to, or which modify, those considered in this proceeding that may prove of greater assistance to us in evaluating the ability of an applicant to obtain access to the capital which it requires." [18] We affirm the statements in that opinion with the hope that such developments will be forthcoming in the near future.

We agree with the law judge's finding that the range of reasonableness for return on equity for CP&L lies in the range of 11.0 percent to 12.5 percent. We do not accept his conclusion that 12.0 percent is at the "upper band" of reasonableness. His observations that ElectriCities' witness used a larger number of samples and that staff's witness exercised a measure of informed judgment at various steps in his presentation are not grounds for narrowing the range. We find that staff's method results in a valid "comparison of CP&L's financial health with that of comparable electric companies" and provides a measure of rate of return "commensurate with returns on investments in other enterprises having corresponding risks". [19]

In its brief on exceptions, CP&L refers at some length to the recent rise in the weighted average cost of its first mortagage bonds and preferred stock. We are aware of these increased costs and have reflected them in the cost rates used in connection with the 1976 year-end capitalization. We also are aware, however, that CP&L's financial posture improved significantly during the very period with which we are here concerned. CP&L refers to the fact that "its most recent issuance of common stock have continued to be at prices lower than book value," [20] however, the record shows that it was able to sell three million shares of new common stock in October 1976 at a price barely below book value [21] and, further, that while its bonds were downgraded by Moody's in 1975 form A to Baa, the original A rating was restored in September 1977.

As stated in our *Idaho Power* decision, [22] a rate of return results from an exercise of informed judgement based on the record and on consideration of the interests of the particular company involved, its investors and its customers. On our review of the record we find that CP&L should be permitted a return on equity of 12.5 percent and that such allowance is fair and reasonable based on the facts presented. This results in an overall rate of retun of 9.49 percent on the jurisdictional rate base found appropriate.

III. ALLOCATION

A. WHOLESALE COINCIDENT PEAK DEMAND

The law judge's determination will be affirmed. The decline projected by CP&L in deriving its projection is substantially greater than that experienced in the earlier 1972-1974 period. CP&L has offered no explanation to support its supposition that the rate of decline will increase to the degree it forecasts and, absent such justification, the wiser course would seem to be to use the 1975 coincident peak load factor appled to the estimated projection of Period II kWh sales. This was the method followed in the initial decision and, on this record, appears to produce the more reasonable result.

B. DEMAND ALLOCATION

One of the principal issues in this proceeding is the determination of the appropriate method for allocating CP&L's demand-related costs. The law judge denied CP&L's requested allocation of production and transmission demand-related costs on the basis of the average demand in the coincident peaks for the months of June through September (4-CP). From his review of the evidence and relevant Commission precedent, he determined that demand costs shared be allocated, instead, on the basis of the coincident peaks in each of the 12 months (12-CP), as recommended by the interveners and staff. CP&L has excepted.

In support of its proposed allocation method, the company claims: [23]

Contrary to the inferences raised by the Staff witness, the record shows that CP&L's system is planned in order to enable it to meet the forecasted peak demand on its system during the year, that such peak normally occurs during the summer months of June through September, and that none of the factors cited by the Staff except unscheduled outages is considered by CP&L in establishing its plans for additions of generating capacity (Tr. 267-270). It should be readily apparent that CP&L's demand is created by the load which it is required to serve, and that maintenance which may be scheduled on a short-term basis, does not create peak demands at any time during the year (Tr. 269). Similarly, short-term sales of firm power do not represent a demand for which CP&L must plan its facilities; they simply represent sales of excess capacity, over and above that needed to provide a more economic utilization of the facilites which have been installed on the basis of CP&L's forecasted system peak demand (Tr. 269).

In our opinion, the law judge decided the issue correctly. CP&L's winter peak has been growing steadily over

[18] Mimeo p. 11.

[19] *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

[20] Brief on exceptions, p. 8.

[21] This is a substantial improvement over 1974 when the price of CP&L's common stock was less than half of book value.

[22] Opinion No. 13, issued May 4, 1978, mimeo. p. 8.

[23] Brief on exceptions, p. 29.

the years at a faster rate than the summer peak and the two rapidly are approaching equality. Information made available in CP&L's 1976 FPC form 12, schedule E-2 on file with the Commission reveals that, using the peak demand for July as equaling 100 percent, the loads in the 8 nonsummer months ranged from a low of 72 percent to a high of 97 percent. In 3 "non-peak" months—January, November and December—the monthly peaks were higher than when experienced in both June and September. The average demand over the summer peak months was only 8 percent greater than the average over the remaining 8 months of 1976. Also, CP&L's winter peak is now only slightly under the following year's summer peak—98 percent in 1975-1976—and the company itself forecasts that the peaks will be of equal size in the period 1976 through 1979.

Although the company claims that it plans its system almost entirely to meet the forecasted peak demand of its customers and that the summer peaks therefore should be controlling in the allocation of demand-related costs, this position is directly contrary to our previous consideration of the issue in other cases, where we have held that it is necessary to consider the full range of a company's operating realities including, in addition to system demand, scheduled maintenance, unscheduled outages, diversity, reserve requirements, and off-system sales commitments.[24]

CP&L's exclusive emphasis on its wholesale customers's loads fails to accord sufficient weight to the effect of other operating requirements on the company's system. The initial decision preperly recognizes the significance of all the system requirements in selecting a reasonable demand allocation method. The determination made in the initial decision will, therefore, be affirmed.

C. FUEL STOCK

The law judge determinded tha the expenses associated with CP&L's fuel stock which is included in its rate base should be allocated by a demand factor rather than, as sought by the company, on the basis of the relative energy usage by the customer classes. CP&L argues that the fuel stock maintained at each generating plant is based on the reserves required to meet anticipated generating requirements during a specified number of days and is, therefore, related to the energy output of the specific plan rather than the demand requirement of such plant.

We believe the law judge erred in his determination. As brought out by CP&L's witness, fuel stock level is determinded by management primarily on the basis of the anticipated energy needs over some specified time period (60 to 90 days) rather than on the basis of the size of peak demand on each generating facility or on the system as a whole. Fuel reserves are maintained primarily in order to permit a utility to continue to produce needed energy in the face of an interruption in fuel supply, rather than to enable the utility to meet expected or unexpected surges in demand. Since the causation of these costs is predominantly energy-related, we are compelled to adopt CP&L's approach in the absence of a detailed analysis indicating what portion of fuel inventory costs should be allocated on a demand basis.

The law judge decided a number of other expense allocation issues. Insofar as we are aware, no exceptions have been taken to these determinations and our review discloses no reasons to consider those issues further.

IV. Tariff Issues

A. HIGH VOLTAGE DISCOUNT

The EMC's have excepted to the law judge's denial of their request for a change in CP&L's rate design into two classes of service: Transmission service (high voltage) and distribution service (low voltage delivery). The matter is set out at length in the initial decision and the determination made therein is supported in replies to exceptions by the company and Pee Dee Electric Membership Corp., one of EMC's members which would be directly affected by the proposal.

The evidence is clear that Pee Dee's situation stems not from any planned favoritism by CP&L but is solely the result of the manner in which the CP&L system grew and attached customers. As was pointed out, CP&L is in the process of upgrading its transmission system from 115 kV to 230 kV and, as such upgrading has taken place, CP&L has requested its customers (including Pee Dee at one delivery point) to discontinue taking 115 kV service.

Under the circumstances, it cannot be found that the provision of service to Pee Dee at a voltage or voltages less than those available to other EMC members constitutes an undue discrimination. This is particularly so since we would expect that as the upgrading process continues, fewer and fewer delivery points would be available for service at the lower voltage levels. The administrative law judge's determination is affirmed.

B. TOTALIZED BILLING

Since 1971, CP&L's tariff has permitted conjunctive billing for all of a customer's delivery points where the customer "takes delivery of all service at each point at a voltage of 115kV or higher and accepts a minimum billing demand of 60,000 kW." The EMC's proposed that the requirement of a minimum billing demand of 60,000 kW be eliminated, and that totalized billing be made applicable to all delivery points of a customer taking delivery at 115 kV or higher, even where certain other delivery points of that customer are at lower voltages than 115 kv.

The EMC's state that the impact of their proposed adjustment can be determined from the coincident demand data filed by the Company in its case in chief." The coincident demand data filed by CP&L reflect the demand at each wholesale delivery point at the time of the system monthly coincident peak demand. However, under the conjunctive billing provision, the monthly demand of the customer is determined on the basis of the demand for all delivery points of that customer at the time of the customer's monthly coincident peak demand. Whether the coincident peak demand of each wholesale customer in each month would occur during the same hour as the system peak demand is problematical at best.

Nor is it possible to use the individual billing demands for each of the wholesale billing points. Again, it is unlikely that the peak demand at each delivery point of a customer will occur at precisely the same time. On this record, the law judge's rejection of the proposed modification to CP&L's conjunctive billing provision is affirmed.

C. RATCHET PROVISION

The law judge rejected CP&L's proposed ratchet clause which provides for the billing of demand charges at a level not less than 95 percent of the customer's highest demand in the preceding months of June through September. A similar clause has been included in CP&L's tariff since 1971.

We agree that a 95 percent billing ratchet would not be consistent with the use of a 12-CP method of demand cost allocation. Although neither the Federal Power Act nor our regulations prohibit the combined use of a 12-CP method of demand cost allocation and a rate design based in part on demand during only a portion of the year,[25] such ratchet is generally undesirable for the reason that it generates differences in customer billing which are not entirely cost justified. With the proposed ratchet any increase in noncoincident demand of a customer

[24] *Illinois Power Company*, opinion No. 816, —— FPC —— issued August 1, 1977; Nevada Power Company, Opinion No. 768, —— FPC ——, issued July 7, 1976: *Wisconsin-Michigin Power Company*, opinion No. 432, 31 FPC 1445 (1964).

[25] Florida Power & Light Company, Opinion No. 784, ——FPC——, issued December 15, 1976, mimeo p. 38.

during the summer ratchet season without a corresponding increase in its coincident peak demand over the same period would produce excess revenues (during any year other than the test period) without any corresponding increase in cost responsibility.

The Commission's policy is that rate design should provide for billing in a manner which reflects the basis on which costs are incurred. CP&L's ratchet is inconsistent with this Commission policy. The proposed ratchet is also incompatible with public policy toward energy conservation since it encourages the customers to increase their power sales, no matter how inefficient those uses, in order to utilize all of the demand they will pay for under the ratchet.

Witnesses for the EMC's and ElectriCities testifying support of a 12-CP method of demand allocation indicated that if the 4-CP demand allocation was adopted, a ratchet in the range of 75 percent to 85 percent might be appropriate. The use of 4-CP demand allocator could be expected to remove some of the objections concerning the mismatching of costs and revenue responsibility inherent in the combination of the 12-CP method and the proposed summer demand ratchet. We would consider, in an appropriate situation, allowing a ratchet at the lower end of the range suggested. However, the evidence in the record is not sufficient to evaluate fully the merits of such a proposal and, pending further exploration in light of CP&L's changing situation regarding its monthly peaks, we believe the wiser course is to forego any demand ratchet in the design of the rates resulting from this proceeding.

V. Adequacy of Service

The presiding judge decided that an independent engineering investigation was needed in order to ascertain the validity of the EM's assertions of discrimination and favoritism by CP&L to different classes of customers. He thereupon held the briefs filed by CP&L and the EMC's to be pleadings "in a complaint case pursuant to section 1.6 of the Commission's rules" and recommended further procedures in accordance therewith. Both CP&L and the EMC's have excepted—CP&L to his failure to find that service has been adequate in all respects, and the EMC's for the failure to grant relief via a reduction in the authorized rate of return or in some other form.

Although the record is replete with assertions and counterassertions by the contending parties, there is little in the way of factual evidence on which the merits of the claims can be properly evaluated. Without doubt, the evidence lacks the precision necessary to support a rate adjustment for the period involved in this case. Whether such an adjustment is in fact appropriate, or whether other remedial actions should be undertaken, can only be established by an engineering evaluation and a fact-finding process. Consequently, we agree with the law judge that further investigation is necessary by the Commission's Office of Electric Power Regulation, possibly in conjunction with the Office of General Counsel, on the intracacies of the engineering aspects and the alleged discriminatory practices in order to gather the supplemental information necessary to decide the issue.

We shall not, however, follow the suggestion by the law judge in converting the existing briefs into a complaint. Rather, we shall leave it to the considered judgment of the EMC's whether they desire to initiate a separate complaint proceeding in the manner indicated. The evidence developed in this case could be incorporated into such a proceeding. Further, we would anticipate that many of the claimed continuing deficiencies could be negotiated informally to a mutually satisfactory resolution.

VI. Price Squeeze

The intervening ElectriCities claimed that a *Conway*[26] type price squeeze would result if CP&L's proposed jurisdictional rates were approved. They further stated that the issue "need not be addressed" if its (ElectriCities) cost of service was accepted. Since the cost of service adopted by the law judge was close to that recommended by the ElectriCities, he did not have to decide whether a price squeeze issue would have been present at a higher rate level. The ElectriCities, in their exceptions, have affirmed the law judge's decision on this issue.

While we have independently redetermined many of the contested issues, we find that the cost of service which we determine proper is relatively close to that previoulsy recommeded such that no price squeeze issue is involved.

We leave the development of the actual compliance rates to CP&L, which must then submit the rates to the Commission for approval. If, on their examination, ElectriCities (or any other party) believes that a viable issue is present, it may submit supplemental briefs for our consideration, detailing its specific objections and the evidence and arguments in support.

The Commission further finds: (1) CP&L is a "public utility" subject to the provisions of the Federal Power Act, and the sales of power subject to the order which follows as a part of this decision are sales of electric power in interstate commerce for resale, subject to the jurisdiction of the Commission.

(2) CP&L's rates, which have been in effect in this docket subject to refund, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Federal Power Act in the respects noted above, and applicant should, therefore, be required to file just and reasonable rates as necessary to conform to this order.

(3) CP&L should be required to refund to its jurisdictional customers any amounts reflecting the difference between its proposed rates and the rates required to be filed by this order together with interest at a rate of 9 percent and otherwise in accord with Order No. 513-A, —— FPC ——, docket No. R,74-18, issued May 19, 1974.

The Commission orders: (A) The increased rates referred to in paragraph (2) above are disallowed to the extent that they do not conform to this order.

(B) Within 60 days of the issuance of this order CP&L shall file a revised cost of service and any necessary amendments to its rate schedules in lieu of those at issue herein, in accordance with the findings and conclusions of this opinion and the Commission's rules and regulations.

(C) Within 30 days of the Commission's approval of CP&L's substitute tariff sheets in accordance with paragraph (B), above, CP&L shall refund to its customers for the period May 1, 1976 to December 29, 1977, all amounts collected in excess of those which would have been payable under the rates and charges approved in accordance with (B) above, together with interest at a rate of 9 percent per annum from the date of payment to CP&L to the date of refund.

(D) Exceptions not granted are denied.

(E) The initial decision is affirmed to the extent not inconsistent with this opinion and order.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-22195 Filed 8-8-78; 8:45 am]

[26] *FPC* v. *Conway Corp.*, 462 U.S. 271 (1976).

[6740-02]

[Docket No. RP78-65]

EAST TENNESSEE NATURAL GAS CO.

Order Accepting Tariff Revisions for Filing and Terminating Proceeding

AUGUST 2, 1978.

On June 6, 1978, East Tennessee Natural Gas Co. (East Tennessee) tendered for filing revisions to its FERC tariff to provide for the flow-through to its customers of all supplier refunds by check or credit to customer billing within 45 days of receipt of such

funds.[1] East Tennessee's filing was made in response to a Commission order to East Tennessee to show cause why certain of its currently effective tariff provisions should not be found to be unjust and unreasonable and thereafter modified. For the reasons set forth below, the Commission shall accept East Tennessee's proposed tariff revisions for filing, and terminate this proceeding.

BACKGROUND

The general terms and conditions of East Tennessee's present tariff [2] provide that East Tennessee shall retain any refunds it may receive from its suppliers, including Tennessee Gas Pipeline Co., until such refunds are final and nonappealable. Upon review of this provision, the Commission could discern no reasonable justification for its inclusion in East Tennessee's tariff. Therefore, by order issued May 17, 1978, the Commission instituted a section 5 investigation and ordered East Tennessee to show cause why this portion of its tariff should not be found to be unjust and unreasonable, and modified so as to cause the immediate flow through of all refunds to its customers.

DISCUSSION

East Tennessee's June 6 filing purports to resolve the issues raised in the Commission's show cause order. East Tennessee states that its proposed tariff revisions provide that the supplier refunds it receives from its suppliers will be flowed through by check or credit to customer billings within 45 days of receipt of such refunds.[3] Accompanying East Tennessee's filing are requests for a July 7, 1978, effective date, waiver of section 154.38(d)(4)(vii) of the regulations to permit the procedures outlined above, and termination of this proceeding.

Our review indicates that the proposed revised tariff eliminates the onerous unjust and unreasonable refund language, and permits the immediate flow through of refunds to the customers. Good cause therefor exists to accept East Tennessee's filing to become effective July 7, 1978, grant waiver of section 154.38(d)(4)(vii) of the regulations, and terminate this proceeding.

The Commission orders: (A) East Tennessee's proposed tariff revisions, filed June 6, 1978, are accepted for filing to become effective July 7, 1978.

(B) Waiver of section 154.38(d)(4)(vii) is hereby granted for the purposes discussed in this order.

(C) This proceeding is hereby terminated.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-22196 Filed 8-8-78; 8:45 am]

[1] Sixth revised volume No. 1, third revised sheet Nos. 68 and 69A, second revised sheet No. 69B, original sheet No. 69C.

[2] Sixth revised volume No. 1, first revised sheet Nos. 69A and 69B, first revised sheet No. 68, second revised sheet No. 69.

[3] Tendered second revised sheet No. 69B contains section 23.2 of East Tennessee's tariff which provides for the flow through of excess curtailment credits received by East Tennessee allocated on the basis of curtailed volumes. The issue of the proper allocation factor for curtailment credits is pending before the Commission on exceptions to the ALJ's decision in docket No. RP71-15, et al. East Tennessee recognizes that the curtailed volumes allocation factor is subject to revision by the Commission's final decision in docket No. RP71-15 et al., and agrees to revise section 23.2 and adjust account No. 191 to reflect the Commission's decision.

[6740-02]

[Docket No. RP78-64]

MIDWESTERN GAS TRANSMISSION CO.

Order accepting Tariff Revisions for Filing and Terminating Proceeding

AUGUST 2, 1978.

On June 6, 1978, Midwestern Gas Transmission Co. (Midwestern) tendered for filing revisions to its tariffs to provide for the crediting of all Southern system supplier refunds to account 191.[1] Midwestern's filing was made in rsponse to a Commission order requiring Midwestern to show cause why certain of its currently effective tariff provisions should not be found to be unjust and unreasonable and thereafter modified. For the reasons set forth below, the Commission shall accept Midwestern's proposed tariff revisions for filing, and terminate this proceeding.

BACKGROUND

The general terms and conditions of Midwestern's present tariff [2] provide that Midwestern shall retain any refunds it may receive from its Southern system supplier, Tennessee Gas Pipeline Co., until such refunds are final and nonappealable. Upon review of this provision, the Commission could discern no reasonable justification for its inclusion in Midwestern's tariff. Therefore, by order issued May 17, 1978, the Commission instituted a section 5 investigation and ordered Midwestern to show cause why this portion of Midwestern's tariff should not be found to be unjust and unreasonable, and modified so as to cause the immediate flow through of all refunds to its customers.

DISCUSSION

Midwestern's June 6 filing purports to resolve the issues raised in th Commission's show cause order. Midwestern states that its proposed tariff revisions provide that the supplier refunds it receives from its Southern system suppliers will now immediately be credited to account No. 191 for the benefit of its customers. Accompanying Midwestern's filing are request for a July 7, 1978, effective date, and termination of this proceeding.

Our review indicates that the proposed revised tariff sheet eliminates the onerous, unjust, and unreasonable refund language, and permits the immediate flow through of refunds to Midwestern's customers. Good cause therefore exists to accept Midwestern's filing to become effective July 7, 1978, and terminate this proceeding.

The Commission orders: (A) Midwestern's proposed tariff revisions, filed June 6, 1978, are accepted for filing to become effective July 7, 1978.

(B) This proceeding is hereby terminated.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-22197 Filed 8-8-78; 8:45 am]

[1] Third revised volume No. 1, second revised sheet No. 82.

[2] Third revised volume No. 1, first revised sheet No. 82.

[6740-02]

[Docket No. CI75-602]

ROY M. HUFFINGTON, INC.

Order Providing for Interrogatories

AUGUST 2, 1978.

Roy M. Huffington, Inc., on April 9, 1975, originally filed a petition to abandon service to Michigan Wisconsin Pipe Line Co. (Mich Wis) from its leases in the Lawson field, Acadia Parish, La., or alternatively, to abandon approximately 30 percent of the sale representing the royalty interest share and to increase the price of the working interest share. Huffington alleged that its lessor, the city of Crowley, La., is demanding increased royalty payments based on the current market value of the gas in accordance with the terms of its lease. The State of Louisiana also has a lease to Huffington containing similar provisions. After a hearing on October 21, 1975, an initial decision was issued on May 2, 1976, denying abandonment or alternative partial abandonment and any price relief. The proceeding has been before the Commission[1] on exceptions

[1] This proceeding was commenced before the FPC. By the joint regulation of October

Footnotes continued on next page

to the initial decision, but the Commission has not acted pending the outcome of the *Pennzoil* litigation.[2]

By letter of July 27, 1977, with attached tables of data, Huffington said that it was now uneconomical for it to continue to produce its share of the remaining Lawson field gas even if Huffington should never be required to pay a royalty based on a price higher than the contract price. It requested that the Commission grant a certificate of abandonment conditioned upon its entering into a new contract with Mich Wis at the national rate presently in effect for new gas subject to such increases as may be approved by the Commission for small producer sales. By order of May 2, 1978, the Commission reopened the record to receive the letter filed by Huffington on July 27, 1977, with the attached tables subject to objection within 30 days of this order by any party or intervenor, who might request a hearing on the additional evidence.

Mich Wis replied stating that it did not object to the receipt of the documents filed, request a hearing, or oppose Huffington's request for rate relief, but it did remain opposed to total or partial abandonment. The staff, however, objected to the admission into evidence of the uncrossexamined letter and tables offered by Huffington. The staff says that Huffington has not supplied sufficient information for rate relief and has not complied with the Commission's order No. 551 issued June 29, 1976.[3] The staff says that, if the Commission should desire further cost information, it could invite Huffington to make a filing pursuant to order 551. Also the staff asks that, if the Commission determines that the table and letter are necessary to resolve the issues in this docket, further on-the-record hearings be held so that the staff will have opportunity to test fully this material.

Huffington's letter filed July 27, 1977, has, in effect, changed the posture of this proceeding. Whereas the application was concerned with increased royalties based on the market value of the gas, the emphasis is now on Huffington's ability to produce its gas without severe losses. We are cognizant of Huffington's request for a solution to its problems without the added expense of a further hearing, and the relatively small amounts of gas involved. On the other hand, Mich Wis has expressded its opposition to abandonment and the staff contends there is a need to test the data presented in Huffington's letter. In order to carry out our responsibilities under the Natural Gas Act as well as to avoid the expenses of a formal hearing we shall direct the staff to serve written interrogatories on the basis of which we may be able to effect a solution to the issues here raised. We shall also afford Huffington opportunity to make application for special relief in accordance with the procedure set forth in order No. 551.

The Commission orders; (A) If Huffington desires to obtain special price relief, it is invited to file an appropriate application on or before October, 1, 1978, in accordance with order No. 551 (18 CFR § 2.76).

(B) The staff of the Commission is directed to serve such written interrogatories on Huffington on or before September 1, 1978, as the staff considers sufficient to achieve the following purposes and Huffington shall respond under oath to such interrogatories on or before October 1, 1978:

(1) To determine whether Huffington should be permitted to abandon its sale to Mich Wis, and, if so, on what terms;

(2) To permit verification of the data submitted by Huffington with its letter of July 27, 1977;

(3) To determine whether Huffington should be afforded price relief with respect to its sale to Mich Wis from its reserves in the Lawson field, Acadia Parish, La.;

(4) To determine whether any other relief should be afforded Huffington or any other determination should be recommended for the issues involved in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-22198 Filed 8-8-78; 8:45 am]

[6740-02]

[Docket No. RP74-41]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

AUGUST 2, 1978.

Take notice that Texas Eastern Transmission Corp. on July 17, 1978, tendered for filing as a part of its FERC gas tariff, fourth revised volume No. 1, the following tariff sheets:

Revised 41st revised sheet No. 14.
Revised 41st revised sheet No. 14A.
Revised 41st revised sheet No. 14B.
Revised 41st revised sheet No. 14C.
Revised 41st revised sheet No. 14D.

By order issued July 6, 1978, the Commission accepted effective July 2, 1978, Texas Eastern's PGA filing of May 17, 1978, subject to modification to reflect any changes in the pipeline supplier rates being tracked therein. The above tariff sheets have been modified to reflect a change in rates from one of its pipeline suppliers, United Gas Pipe Line Co., and are now in compliance with the Commission's order of July 6, 1978.

The above tariff sheets also reflect a flow through to Texas Eastern's zone D customers the monthly exchange charge of $150,000 received from Consolidated System LNG Co. by means of a rate reduction to the demand component of rate schedules DCQ, GS, WS, SS, and X-28 as previously filed for on June 2, 1978, and approved by Commission order issued July 5, 1978.

The proposed effective date of these tariff sheets is July 2, 1978.

Copies of this filing were served on the company's jurisdicational customers and interested state 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 procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 18, 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. 78-22199 Filed 8-8-78; 8:45 am]

[3128-01]

Office of Hearings and Appeals

CRUDE OIL PRODUCERS

Applications for Exception Filed

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Cancellation and rescheduling of public hearing.

SUMMARY: On June 19, 1978, the Office of Hearings and Appeals of the

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Footnotes continued from last page

1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission," when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] *Pennzoil Producing Company*, et al., —— FPC——, opinion No. 753, docket No. RI76-8 et al., issued January 30, 1976, rehearing denied, ——FPC——, opinion No. 753-A, issued February 27, 1976, reversed and remanded *Pennzoil Producing Company* v. *F.P.C.*, 553 F. 2d 485 (CA5-1977), modified on rehearing ——F.2d—— (CA5-1977), petition for certiorari granted, Sup. Ct. No. 77-648, June 2, 1978.

[3] See 18 CFR § 2.76.

Department of Energy gave notice that it desired to receive comments regarding the standards that the Department of Energy (DOE) presently applies in granting exception relief to certain crude oil producers. 43 FR 26792 (June 22, 1978). The Office of Hearings and Appeals also stated that public hearings regarding the June 22 notice would be held in Houston, Tex., on August 10, 1978, and in Washington, D.C., on August 16, 1978, in order to afford interested parties an opportunity to make oral presentations and provide comments. Persons who wished to make an oral presentation of their views in the matter were to submit a request to the DOE no later than August 1, 1978. To date only six persons have expressed an interest in making an oral presentation at the hearing to be held in Houston, Tex., on August 10, 1978. Three of those persons have also sought an opportunity to speak at the August 16, 1978, hearing to be held in Washington, D.C. In view of the small number of requests to speak at the August 10 hearing, the two hearings will be consolidated and will be held in Washington, D.C., on August 16, 1978. The time and place of the hearing are the same as indicated in the June 22, 1978, FEDERAL REGISTER notice. The August 10, 1978, hearing to be held in Houston, Tex., is hereby canceled.

FOR FURTHER INFORMATION CONTACT:

Debra Kidwell, Office of Public Hearing Management, 2000 M Street NW., Room 2313, Washington, D.C. 20461, 202-254-8846.

Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 2000 M Street NW., Room 8014, Washington, D.C. 20461, 202-254-9681.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70; Energy Conservation and Production Act, Pub. L. 94-385, as amended, Pub. L. 95-70, Pub. L. 95-91; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

Issued in Washington, D.C., August 3, 1978.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

[FR Doc. 78-22127 Filed 8-7-78; 8:45 am]

[1505-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 936-1]

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Receipt

Correction

In FR Doc. 78-21135 appearing at page 33318 in the issue of Monday, July 31, 1978, on page 33319, first column, in the third complete paragraph, eleventh line, the figure now reading "431" should be corrected to read, ".431".

[6560-01]

[FRL 941-4; PF-101A]

PESTICIDE AND FOOD ADDITIVE PETITIONS AMENDMENT

Notice of Filing

On May 10, 1978, the Environmental Protection Agency (EPA) announced (43 FR 20051) that Phostoxin Sales, Inc., Box 469, Alhambra, Calif. 98102, had submitted a petition (FAP 8H5184) which proposed to amend 21 CFR Part 561 by establishing a food additive regulation permitting direct contact by fumigation of the formulation containing aluminum phosphide in or on processed rice and malt stored in breweries for the manufacture of beer with a tolerance limitation of 0.01 part per million (ppm). The applicant has submitted an amendment to this petition to include corn grits with the same tolerance limitation of 0.01 ppm. Notice of this submission is given pursuant to section 409(b)(5) of the Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Inquiries concerning this petition may be directed to Product Manager (PM) 16, Registration Division (TS-767), Office of Pesticide Programs at the above address, or by telephone at 202-755-9315. Written comment should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated; August 2, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-22164 Filed 8-8-78; 8:45 am]

[6560-01]

[FRL 941-2; OPP-50371]

THOMPSON-HAYWARD CHEMICAL CO.

Issuance of Experimental Use Permit

The Environmental Protection Agency (EPA) has issued an experimental use permit to the following applicant. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 148-EUP-22. Thompson-Hayward Chemical Co., Kansas City, Kans. 66110. This experimental use permit allows the use of 1,634.5 pounds of the insecticide *N*-[[(4-chlorophenyl)amino] carbonyl]-2,6-difluorobenzamide on cotton to evaluate control of the boll weevil. A total of 2,590 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas. The experimental use permit is effective from June 12, 1978, to June 12, 1979. Temporary tolerances for residues of the active ingredient in or on cottonseed, eggs, milk, and meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep have been established.

Interested parties wishing to review the experimental use permit are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. It is suggested that such interested persons call 202-755-4851 before visiting the EPA headquarters office, so that the appropriate permit may be made conveniently available for review purposes. This file will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 5, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751 (7 U.S.C. 136(a) et seq.).)

Dated: August 2, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-22150 Filed 8-8-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20801; FCC 78-560]

MIDWESTERN RELAY CO.

Memorandum Opinion and Order Instituting Investigation

Adopted: July 27, 1978.

Released: August 7, 1978.

INTRODUCTION

1. Our prior memorandum opinion and order herein, 59 FCC 2d 477 (1976) (order), denied a petition for rejection filed by American Broadcasting Companies, Inc. (ABC) and Columbia Broadcasting Systems, Inc. (CBS) (hereinafter petitioners) of the above-captioned tariff revision, granted a petition for suspension filed by Community Video Inc., imposed an accounting order, and instituted an investigation.[1] We have before us two sets of pleadings. The first is a petition filed on June 21, 1976, for reconsideration, filed by petitioners, of that part of our order denying rejection of Midwestern's rate revision to its class A service.[2] Midwestern Relay Company, Inc. (Midwestern) filed an opposition and petitioners filed a reply. The second pleading is a petition to modify the issues, filed by Midwestern of February 13, 1978, requesting that we restrict the upcoming investigation and hearing to only those issues relating to the lawfulness of the rates for Midwestern's class C service.[3] The Common Carrier Bureau trial staff (trial staff) submitted comments regarding this second pleading and Midwestern filed a reply. Midwestern also filed a supplemental letter to this motion which, among other things, included an affidavit to the facts alleged in the motion. We will consider each set of pleadings separately.

I. RECONSIDERATION OF ORDER DENYING REJECTION OF CLASS A RATES

(A) BACKGROUND

2. Midwestern is a miscellaneous common carrier providing point-to-point microwave service in a region north of Chicago. Its class A service transmits network signals for petitioners to 44 network affiliated television stations (as well as other television signals which are provided to other stations) in a four State area.[4] Before Midwestern initially commenced operations, it entered into contracts with petitioners purporting to establish rates and conditions for which Midwestern would provide this service to petitioners. The contracts provided that Midwestern would not file any tariff which would be inconsistent with the contracts for a period of 5 years, and that it would offer class A service to all other customers at similar rates during this period. Midwestern filed its initial tariff, effective November 1972, setting forth the rates contracted for with petitioners and providing that the initial period for providing service would be 5 years.[5] Midwestern then filed for a tariff revision in March 1976. Petitioners filed a petition for rejection, their sole ground being that the revision was unlawful on its face because it conflicted with Midwestern's contracts with Petitioners and the currently effective tariff. In our order, 59 FCC 2d at 480, we held that the tariff governs the rates a carrier may charge a customer for common carrier services and therefore declined to reject Midwestern's tariff filing on the basis that such filing conflicted with outstanding contracts between Midwestern and petitioners. Petitioners here seek reconsideration of the Commission's refusal to reject the tariff.

(B) ALLEGATIONS OF THE PARTIES

3. Petitioners claim that the decision in *United Video, Inc.*, 49 FCC 2d 878 (1974), recon. denied, 55 FCC 2d 516 (1975) (United Video), where we declined to find that a contract between a carrier and a customer prevented the carrier from filing for a rate revision, should not have been applied to this case for several reasons. First, they contend that the basis for our holding in that case was that we interpreted the contract to permit the carrier to unilaterally file for a rate revision, while here the contract does not lend itself to such an interpretation. Second, petitioners claim that a question of discrimination existed in *United Video* because, had we held the contract valid, some customers of United would have been allowed to pay the rates under the contract while others would have had to pay the rates under United's tariff. Petitioners claim that in this case a question of discrimination is not present as Midwestern must offer this service to all customers on the same basis on which they offer it to petitioners. Third, they assert that the relevant contract provisions in *United Video* were not a part of the carrier's existing tariff, while here, the specific contract rate and time period are part of Midwestern's existing tariff, causing the tariff revision to conflict with the existing tariff as well as the contract.

4. In response to these contentions, Midwestern argues that Petitioners have not distinguished this case from *United Video* on any relevant grounds. Midwestern claims that the real basis for our holding in *United Video* was that section 203(c) of the Communications Act, 47 U.S.C. section 203(c), mandates that a carrier provide service to its customers by tariff. Accordingly, they argue, we would have reached the same result even if we had not found the contract there to allow the carrier to revise its rates. Midwestern would also have us find that the alleged discrimination issue in *United Video* is irrelevant because it was not a basis for the decision there. Finally, Midwestern claims that petitioners' argument regarding the conflict between Midwestern's tariff revision and its existing tariff should carry no weight because a carrier's existing tariff should have no effect on the lawfulness of a carrier's tariff revision.

5. Petitioners also claim that the holding in *Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F. 2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975) (*Bell of Pa.*), requires that we apply the analysis of *United Gas Pipeline Co.* v. *Mobile Service Corp.*, 350 U.S. 332 (1956) (*Mobile*) to the case before us and find that the Communications Act permits carriers and customers to order their relations regarding common carrier service by contract. Petitioners contend that even if section 203(c)[6] specifically requires that charges be established by tariff, sections 202(a), 211(b) and 414,[7] create exceptions which permit rates to be set by contract between carriers and non-carrier customers. Midwestern responds by arguing that *Bell of Pa.* is limited to only carrier-to-carrier situations and has no relevance here. It also claims that *United Video* rejected the *Mobile* analysis in carrier-to-customer situations and applied the Supreme Court's reasoning in *Armour Packing Co.* v. *United States*, 209 U.S. 56 (1908) (*Armour*), which requires that tariffs exclusively control the

[1] The investigation and hearing were deferred pending the outcome of docket No. 19609. See note 28, infra.

[2] Midwestern's class A service is utilized by the major commercial television networks. It offers a protected television transmission service (both full-time and occasional) and provides, among other things, for interconnection with other participating carriers.

[3] Midwestern's class C service provides for unprotected transmission of television signals which are picked up at a carrier's transmitter and delivered to the customer. This service was designed primarily for use by cable television systems. Class B service consists of unprotected, point-to-point transmission between designated origination and receiving points. This latter service is used by Wisconsin's educational television network.

[4] Northern Illinois, Wisconsin, eastern Minnesota and northeastern Iowa.

[5] Midwestern Tariff F.C.C No. 1, Section D.5.a, Original Page 11.

[6] 47 U.S.C. section 203(c).

[7] 47 U.S.C. sections 202(a), 211(b), and 414.

rates a carrier may charge a customer. Midwestern also argues that even under the analysis of *Bell of Pa.* the result would be the same because the provisions of the Communications Act cited by petitioners as creating exceptions to section 203(c) shold not be interpreted to permit carrier-to-customer contracts for common carrier service.

(C) DISCUSSION

6. Petitioner's claim that we must reject a tariff filing for common carrier service which conflicts with a contract between the carrier and a customer is without merit. Although revisions to tariffs under the Communications Act are carrier-initiated,[8] we may reject such revisions if we find that it patently conflicts with the Communications Act, our rules, or a Commission order.[9] We could make such a finding in this case only if the act permits carriers to fix rates for service to non-carrier customers by contract. However, section 203(c)[10] specifically requires the use of tariffs and states that no carrier shall charge a different compensation than the charges specified in the schedule then in effect. We have previously interpreted this provision to require that a carrier's charges to a customer must be determined by a lawful tariff notwithstanding any conflicting contract provision, *United Video*, 49 FCC 2d at 880, 55 FCC 2d at 518. The courts have also interpreted section 203(c) as the provision which controls the rights and liabilities between the parties.[11] Accordingly, in determining whether Midwestern's tariff revision is unlawful on its face we can give no weight to the mere fact that this revised tariff may conflict with a contract between Midwestern and petitioners.

7. Petitioners' various arguments that this case can be distinguished from *United Video* are not convincing. In that case, United Video, Inc. (United) entered into a contract with Liberty TV Cable, Inc. (Liberty) setting a specific monthly charge for transmission of Liberty's television signals for a 10 year period. Before the expiration of the period, United filed a tariff revision and Liberty petitioned for rejection on the ground that this revision conflicted with the contract between them. In denying Liberty's petition, we held that a conflicting contract provision did not make the tariff revision unlawful on its face, 49 FCC 2d at 880. Petitioners attempt to distinguish their case first by claiming that the basis of our holding was that we interpreted the contract provision in *United Video* to allow the carrier to file for a rate revision without breaching its contract, while here the contract explicitly states that Midwestern will not file a tariff inconsistent with the contract. While this factor was referenced in our holding in that case, it is equally clear that we held, on separate and independent grounds, that the tariff governs carrier relationships with non-carrier customers, regardless of any contract to the contrary, 49 FCC 2d at 880. We explicitly stated that this latter ground was the primary basis of our holding on reconsideration.[12] *Accord, Western Tele-Communications, Inc.*, 55 FCC 2d 203, 208 (1975).

8. Petitioners' next attempt to distinguish their case from *United Video* by contending that a question of discrimination existed in that case which they argue is not present here. In that case the contract provided for a fixed rate to be paid by the complainant to United for common carrier service, while other customers of United presumably would have had to pay the tariffed rate. Petitioners argue that we refused to recognize the contract there because to do otherwise would have resulted in a rate discrimination, as some customers would have paid the rates stated in their contracts with United, and other customers would have paid the rates in United's tariff. Petitioners point to their different contract provision with Midwestern and argue that it allows all customers to receive this service on the same basis as the most favored customer receives it. Hence, they argue, there could be no discrimination of rates as all customers could receive service at the contract rate. It is unnecessary for us to determine the validity of this distinction, however, as our holding in *United Video* clearly was not predicated on this circumstance. Because we found in that case that the tariff governs the carrier's charges *regardless* of any existing contract, we did not even reach the question of whether providing service by contract would result in unlawful discrimination.

9. Petitioners finally contend that this case can be distinguished from *United Video* because Midwestern's tariff revision conflicts with its currently effective tariff. In *United Video* the relevant contract provisions were never made a part of United's effective tariff and the issue of a tariff revision conflicting with the carrier's effective tariff never arose. In this case, however, the relevant contract provisions (i.e., the specific rate and the 5 year contract period) are also a part of Midwestern's existing effective tariff.[13] Therefore, petitioners argue, Midwestern's tariff revision is unlawful because it causes an increase in Midwestern's rates before the end of the 5 year period stated in its existing effective tariff. However, petitioners have not shown why this requires rejection of this tariff revision. As stated above, we must reject a revision when it clearly conflicts with the act or our rules or orders. The fact that a tariff revision would conflict with an existing tariff does not, in itself, meet that test. In fact, any tariff revision normally conflicts with an existing tariff when it seeks to change an existing provision. Accordingly, we find that petitioners have not distinguished this case from *United Video* on any relevant grounds. Therefore, our order, to the extent it relied on *United Video* to deny petitioners' request for rejection of Midwestern's tariff revision, is consistent with our findings here.

10. We also believe our order is consistent with the analysis by the Third Circuit in *Bell of Pa.* There the court had to decide whether A.T. & T. could file tariffs which would have permitted it to terminate a lease of facilities to Western Union when a contract existed between them requiring a 5 year notice period before termination. In affirming our decision[14] rejecting A.T. & T.'s tariff filings, the Third Circuit reconciled two seemingly conflicting U.S. Supreme Court cases, *Mobil* and *Armour, supra.* In *Mobile* the Supreme Court found that a contract between a natural gas company and a distributor could not be superseded by a subsequently filed tariff, while in *Armour* the Court found that a shipper must pay the railroad's revised tariffed rate

[8] *See* 47 U.S.C. 203(b) which allows a carrier to change its rates after meeting our notice requirements. See also, *American Telephone and Telegraph* v. *FCC.*, 487 F.2d 865 (2nd Cir. 1973).

[9] *Associated Press* v. *FCC, 448 F. 2d 1095, 1103 (D.C. Cir. 1971); United Video, Inc.*, 49 FCC 2d at 880.

[10] 47 U.S.C. 203(c) states in pertinent part. No carrier, unless otherwise provided by or under authority of this act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation, for such communication, or for any service in connection therewith, between points named in any such schedule than the charges specified in the schedule then in effect * * * (emphasis added).

[11] *See Schaafs* v. *Western Union Telegraph Co.*, 215 F. Supp. 415 (E.D. Wis. 1963); *American Telephone and Telegraph Co.* v. *Florida-Texas Frgt. Inc.*, 357 F. Supp. 977 (S.D. Fla.), aff'd, 485 F. 2d 1390 (5th Cir. 1973).

[12] 55 FCC 2d at 518: In view of the foregoing, we reiterate our holding that, with respect to common carrier service offerings to customer-users, the effective rates, practices and regulations are those which appear in the carrier's tariff on file with the Commission, and such tariff, the Commission's Rules and the Communications Act itself are applicable as a matter of law, notwithstanding any conflicting provision appearing in an agreement executed by a carrier with its customer.

[13] *Supra*, note 5.

[14] Bell System Tariff Offering, 46 FCC 2d 413 (1974).

even though the shipper had a contract with the railroad setting a lower rate. The Court in *Bell of Pa.* reconciled these cases by finding that the different holdings were based on the different Federal regulatory schemes involved in each field. It found that the Natural Gas Act, as applicable to *Mobile*, permitted rates between the parties to be set by contract, while the Interstate Commerce Act, as applicable to *Armour*, prescribed uniform rates for customers, and hence did not permit the parties to set their rates by contract. Applying this analysis to the case before it, the Court in *Bell of Pa.* found the Communications Act, through sections 201(b) [15] and 211(a),[16] permitted carriers to set their rates with other carriers by contract. Finding the Communications Act, insofar as it pertains to carriers' relations with other carriers, to be similar to the Natural Gas Act in its regulatory scheme, the Third Circuit found that A.T. & T. could not unilaterally modify its contract with Western Union by filing a conflicting tariff.

11. However, in contrast, the Communications Act does not permit carriers to set rates for common carrier services with customer-users by contract. Section 203(c) [17] specifically requires that the tariff govern the rates a carrier may charge, "unless otherwise provided by or under authority of this chapter." While the Court in *Bell of Pa.* found this authority for carrier-to-carrier contracts in sections 201(b) and 211(a), these provisions clearly do not apply to carrier-customer contracts. The Third Circuit was careful to point out that its finding applied only to carrier-carrier situations and implied that carrier-customer situations may warrant a different result. The Court stated that "[w]hile communications carriers may * * * be prohibited from contracting with customer-user, we find no such directive barring contractual relations between independent carriers." 503 F. 2d at 1276. Therefore, with respect to common carrier services provided to customer-users, we believe that the rule of *Armour* should be controlling.

12. Petitioners claim here, however, that other sections of the Act, notably 202(a), 211(b) and 414, supply the necessary authority in carrier-customer situations. We cannot agree. Because section 203(c) specifically requires carrier rates to be governed by tariff "unless otherwise provided by or under authority of this chapter," any provision of the Act which is purported to create the authority to come within this exception must be clearly expressed. None of the sections cited by petitioners expressly create this exception. Section 202(a) proscribes unlawful discrimination "by any means or device."[18] Petitioners claim that "device" as used here includes contracts and that since this section outlaws only those contracts which result in unlawful discrimination, all other contracts, including carrier-customer contracts, are permissible. This is a superficial argument at best. While "device" as used here does include contracts in general, "Bell System Tariff Offerings," 46 FCC 2d 413, 432 (1974), this provision does not enlarge the types of permissible contracts, but merely proscribes discrimination in the types of contracts which are permitted.[19] Section 211(b) [20] is of no more help to petitioners' argument. Petitioners claim that because section 211(a) refers to contracts of carriers with other carriers,[21] that section 211(b)'s language regarding "other contracts of any carrier" must refer to carrier-customer contracts if this provision is to have any meaning. If carriers could only enter into these two types of contracts, this might be plausible. However, it is clear that there are many other types of contracts that a carrier might have.[22] Consequently, there is not basis for inferring that Congress was specifically contemplating carrier-customer contracts when section 211(b) was passed.[23] Similarly, section 414[24] is of no help to petitioners. They argue that this section shows a general intent by Congress in passing the Act not to diminish the legal force of contracts between a carrier and a customer. But if this were a valid interpretation of section 414, then the purposes of section 203 would be stripped of any meaningful function and would invite the very types of discrimination and preferential treatment it was designed to prevent. If we were to follow Petitioners' argument to its logical conclusion, a carrier would always be able to extend preferential rates to certain of its customers by simply entering into a contract prior to filing a new or revised tariff and then later rely on section 414 to contend that the preexisting preferential contract rates are still legally binding. We do not believe that Congress intended by section 414 to permit carriers to do by contract what it specifically prohibited them from doing when it enacted section 203.[25] Thus,

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[15] 47 U.S.C. section 201(b) states in pertinent part: * * * [N]othing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest * * *.

[16] 47 U.S.C. section 211(a) states that "[e]very carrier subject to this Act shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers * * *."

[17] *Supra*, note 10.

[18] 47 U.S.C. section 202(a) states:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage. [Emphasis added.]

[19] Since other types of contracts are permitted under the act, e.g., carrier-carrier (section 211(a)), carrier-supplier (section 215), there is no basis for inferring that this provision contemplated carrier-customer contracts.

[20] 47 U.S.C. section 211(b) states that "[t]he Commission shall have authority to require the filing of any other contracts of any carrier, and shall also have authority to exempt any carrier from submitting copies of such minor contracts as the Commission may determine." [Emphasis added.]

[21] Supra, note 16.

[22] For example, section 215, 47 U.S.C. section 215, recognizes that a common carrier may enter into transactions "which relate to the furnishing of equipment, supplies, research, services, finances, credit or personnel."

[23] Petitioners also point to the legislative history of the Act, alleging that the original version of the Act contained only section 211(a) and that 211(b) was added to reach those contracts which would be made by the carriers with persons "other than carriers." While this shows that Congress had more than carrier-to-carrier contracts in mind when drafting this provision, it again does not imply that Congress was contemplating carrier-customer contracts rather than other types of permissible carrier contracts.

[24] 47 U.S.C. section 414 states that "[n]othing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies."

[25] Section 414 does preserve actions based on breach of contract for matters not modified of by the Act. The courts which have had occasion to interpret section 414 indicate that, in passing the Communications Act, Congress did not intend to preclude aggrieved parties from seeking remedies for breaches of duties not explicitly created by the Act. In other words, the Communications Act created a new set of statutory duties for communications common carriers which are in addition to other common law or statutory duties already in existence. In the event those other duties are breached by carriers which are regulated by this Commission, section 414 simply provides that the causes of action resulting therefrom are not to be preempted because those carriers are also subject to federal regulation. "See Comtronics, Inc. v. Puerto Rico Telephone Co.", 533 F. 2d 701 (1977); "Ashley v. Southwestern Bell Telephone Co.", 410 F. Supp. 1389 (1976); "Cable Vision Inc. v. KUTV, Inc.", 211 F. Supp. 47, *vacated on other grounds*, 335 F. 2d 348 (1964). However, section 414 does not give rise to actions based on preexisting duties which have been modified by the act, such as an action for damages based on the variance beteen a contract rate and a tariff rate where the contract, as here, is between a

Footnotes continued on next page

petitioners have pointed to no express authority under the act which comes within the exception provided by section 203(c). Following through with the analysis in "Bell of Pa.," it is clear that section 203(c) exclusively governs the rates a carrier may charge a customer-user for common carrier service. Accordingly, "Bell of Pa." lends no weight to petitioners' argument that a tariff revision which conflicts with a contract between the carrier and a customer-user must be rejected.

13. Petitioners would, if all else fails, have us find that this tariff should be rejected on various public policy grounds. They claim that by not rejecting this tariff revision we will effectively eliminate the ability of carriers and customers to order their business by contract. Customers will no longer be willing to make costly switch-overs to a carrier's service, they argue, because there will be no means by which a customer may obtain any long-term commitments from a carrier regarding the terms of service to be provided. Petitioners specifically request that we prevent a carrier from revising its tariffs in at least the particular circumstance where the rates are carrier-made rather than Commission-prescribed, and the carrier and customer have entered into a contract for specialized services at a price agreed upon by the carrier. Petitioners cite a number of cases outside the communications field in which carrier-customer contracts involving specialized services to primarily business customers are permitted.[26] Even if we were to agree with petitioners that carrier-customer contracts should be allowed to definitively establish rates in some limited areas, we are prevented from so finding as the Communications Act, as shown above, does not provide for rates to be set in this manner. Accordingly, we shall deny petitioners' reconsideration request.

II. Midwestern's Motion To Modify Issues

(A) Background

14. As stated above; our order granted the petition for suspension filed by Community Video, Inc., imposed an accounting order on all services affected by the tariff revision, and deferred the hearing pending the outcome of docket No. 19609,[27] or until further Commission order, 59 FCC 2d at 481. One of the reasons we gave for our action was that Midwestern's rate structure for its class C service to cable television systems embodied concepts similar to those being considered in docket No. 19609 (i.e. a population-sensitive rate structure). Further, we stated that questions existed regarding Midwestern's capital structure affecting its overall rate of return. For example, its equity/debt ratio when computed by the figures provided by the section 61.38 data[28] was substantially different from the equity/debt ratio when computed by the figures contained in Midwestern's FCC form P[29] for 1974. Finally, we noted that questions existed regarding the manner in which financial contributions to Midwestern from the Journal Co. (the majority partner of Midwestern) were reflected for accounting and ratemaking purposes.

(B) Claims of Midwestern

15. Midwestern's instant pleading requests that we delete any issues in the upcoming hearing concerning its capital structure.[30] While conceding that there may be questions regarding the rate structure for its class C service, it claims that any questions regarding the overall capital structure or financial contributions result from minor discrepancies and can be easily explained. As to the apparent difference in the equity/debt ratio when computed under the separate data, Midwestern explains that this results because the figures contained in § 61.38 data include "total capital contributions", while the FCC form P data only includes "owner equity". Midwestern explains that "owner equity" consists of total capital investment with additions and subtractions for profits and losses, which in Midwestern's case, is a much smaller figure than total capital contributions. As to the financial contributions of the Journal Co., Midwestern states that all contributions were treated as additional capital, with the exception of $1.5 million in loans. It also submitted, with the instant pleading, a table showing the dates and amounts of all its contributions during the relevant time period.

16. Midwestern claims that since these two issues are cleared up in the instant pleading, the only issue remaining for consideration in the upcoming hearing should be its rate structure for its class C service. It claims that the burden and strain of the present accounting order, which covers all services which received an increase in charges under Midwestern's revision to Tariff FCC No. 1, is causing serious harm to Midwestern by requiring extra hours of computation which, it argues, is now unnecessary. It therefore asks that we lift the accounting order from all services other than the class C service (and thus implicitly requests that the investigation be narrowed to include only the rate structure issue for its class C service).

17. Midwestern also states that Community Video, Inc., the initial party to this proceeding, has now been purchased by the Journal Co. (Midwestern's majority partner). The instant pleadings give notice that neither Community Video, Inc. nor its successor, the Journal Co., will participate in the upcoming hearing.

18. The trial staff, in its comments, does not take issue with Midwestern's explanation of the differing equity/debt ratios. As to the financial contributions of the Journal Co., the trial staff states that while Midwestern's explanation adequately clarifies the accounting method used, it is still not clear how such contributions were reflected for "ratemaking purposes." The trial staff also states that the Commission may have other questions regarding Midwestern's overall rate of return. it suggests, however, that these issues are discrete from the rate structure of Midwestern's class C service and, because Midwestern alleges that the present accounting order is burdensome, it suggests we go forward on any issues we may have other than the class C rate structure. The trial staff finally states that it is not clear whether the Journal Co. acquired all preexisting rights of Community Video, Inc. and its shareholders when it purchased the company. It therefore suggests that we require Midwest-

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Footnotes continued from last page
carrier and a customer for common carrier services. "See Farley Terminal Co., Inc. v. Atchison, T.&S.F.Ry. Co.", 522 F. 2d 1095 (9th Cir., 1975), *cert. denied*, 423 U.S. 996 (1975).

[26] Petitioners also cite some cases within the communications field where a carrier has been permitted to offer service to its customer solely by contract, e.g., "National Aeronautics and Space Administration", 61 FCC 2d 56 (1976). However, these contracts do not involve the provision of common carrier service, a specific requirement for the application of section 203, and accordingly, these cases have no relevance here.

[27] "American Television Relay, Inc.", 37 FCC 2d 203 (1972) (Designation Order), 63 FCC 2d 911 (final decision), recon. denied, 65 FCC 2d 203 (1977), review pending. Case No. 77-1910 (D.C. Cir.).

[28] Such data is required by our rules, 47 CFR 61.38.

[29] Our rules, 47 CFR 1.785(6), require that an annual financial report, FCC form P, be filed by certain carriers and their affiliates.

[30] We note that consideration of the capital structure issue would give a broader focus to the investigation. Examining the capital structure is only part of the analysis necessary in determining Midwestern's cost of providing service within the statutory framework of sections 201-205 of the Act, which require a carrier's rates to be just, reasonable and otherwise lawful, 47 U.S.C. 201-205. This involves first determining Midwestern's overall revenue requirement, i.e., determining its rate base and expenses, including a proper return on investment, and the allocation of such revenue requirement among classes of Midwestern service. Once the reasonableness of the particular allocation to class C service is determined, the question of the appropriate rate structure needed to distribute this allocation to class C subscribers would then be considered.

ern to retain all accounting records required by our prior order up to and until the pendency of the upcoming hearing because of the possibility that we may order a refund as a result of that hearing.

19. Midwestern, in its reply to the trial staff comments, states that its financial contributions, for ratemaking purposes, were treated as specified in the attachment to its motion. Specifically, $1,500,000 (less $500,000 which was repaid) was treated as debt and all remaining funds provided to Midwestern by the Journal Co. through December 31, 1976, were treated as equity investment. In response to the trial staff's suggestion that it retain accounting records regarding revenues from its cable television system, class C customers, it states that it has no objection and, in fact, intends to retain all such records until the conclusion of this issue.

(c) DISCUSSION

20. The financial contributions supplied to Midwestern by the Journal Co. now appear to be substantially clarified as to its handling for accounting and ratemaking purposes. While Midwestern's explanation for the discrepancy between the differing equity/debt ratio computations appears to resolve our concerns in part, there still remain questions of lawfulness regarding Midwestern's capital structure. For instance, we are still not clear as to which equity/debt ratio Midwestern should use (i.e., the ratio in its form P, in its section 61.38 material, or some other ratio) in determining its overall rate of return and the resultant impact on its overall revenue requirement. Also, our prior order, having found the above apparent discrepancy, did not elaborate on all questions of lawfulness raised by Midwestern's support data. This data reveals other issues which should be clarified and resolved in the hearing process itself, such as:

(a) Whether Midwestern should be allowed to take the full statutory 48 percent corporate tax as an expense when it has "loss carry forward" deductions from prior years;

(b) The appropriate method of debt calculation—including whether to consider as debt the "compensating loan balance" (the amount required by the bank to be kept on deposit during the loan period); and

(c) While Midwestern's section 61.38 data seems to show that it is not in an excessive earnings position over all (e.g., its 1978 projected return is shown as 9.6 percent), the reasonableness of the disparities in Midwestern's projected rates of return for each class of service should be examined. For example, Midwestern's 3-year projected rates of return in its support data vary from a low of 3.0 percent for the class A occasional transmission service provided to the major commercial television networks, to a high of 12.6 percent for class C transmission service provided to cable television systems. Clearly relevant to this issue is the reasonableness of Midwestern's allocation of any common or joint costs among its service classes and the reasonableness of cross-subsidization, if any, among its classes of service.

21. Contrary to Midwestern's claim, the fact that Community Video, Inc. has been purchased by the majority partner of Midwestern is not dispositive of the issues already set for hearing.[31] The trial staff was made a party by our prior order and thus has a duty to represent the public interest in this matter. As noted above, it has certain concerns regarding the appropriateness of our granting Midwestern the requested relief. Also, our prior order allowed other interested persons to participate by filing a notice of such intention within 30 days of the publication of that order. Since Community Video, Inc., will not be actively participating in the upcoming hearing, which we are reactivating in part herein, we will afford interested persons another opportunity to participate due to the changed status of Community Video, Inc.

22. Midwestern also alleges that the present accounting order is causing serious harm to the company because of the detailed computations and records it must now keep for revenues which it receives from all classes of service it offers. As noted above, questions of lawfulness exist with respect to the overall revenue requirement upon which Midwestern bases its charges for its various classes of service. Therefore pending resolution of such questions, the termination of the accounting order as requested would not be appropriate. Moreover, Midwestern offers no facts or figures to back up this allegation of harm or to even inform us of the extent of this alleged burden. Our prior order deferred the hearing in this case until the proceeding in docket No. 19609 was completed or until further Commission order. While docket No. 19609 is now completed,[32] we ordered ATR, the carrier in that case, to file a revised tariff regarding its population-sensitive rate structure. On consideration of this revised tariff,[33] we indicated that we would be implementing a general rulemaking proceeding regarding the appropriateness of population-sensitive rate structures. Due to the time considerations of a general rulemaking proceeding, and since Midwestern considers the present accounting order to be burdensome, we shall reactivate this proceeding to consider all issues pertaining to Midwestern's overall revenue requirement and its allocation among the various classes of service. The rate structure issue regarding class C service shall be considered later and as provided for in a further Commission order. This hearing approach will allow us to determine expeditiously whether any adjustments are necessary in the accounting order pending the ultimate disposition of this docket.

III. ORDERING CLAUSES

23. *Accordingly, it is ordered,* That the petition for reconsideration filed jointly by petitioners ABC and CBS and the motion to modify issues filed by Midwestern are hereby denied;

24. *It is further ordered,* That, to the extent set forth herein, this investigation, without otherwise limiting its scope, shall include consideration of the following:[34]

(1) Whether the charges, classifications, practices and regulations published in the revisions to Tariff FCC No. 1, transmittal No. 11, or in any subsequent revisions to this tariff during the pendency of this investigation, are or will be unjust or unreasonable within the meaning of section 201(b) of the Act;

(2) Whether such charges, classifications, practices and regulations will, or could be applied to, subject any person, class of persons, or locality to unjust or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of section 202(a) of the Act; and

(3) If any such charges, classifications, practices or regulations are

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[31] The trial staff properly notes that it is not clear whether all claims to the revenues collected by Community Video, Inc. prior to the merger and covered by the then-existing accounting order have been extinguished by the merger.

[32] See note 27, supra.

[33] "American Television Relay, Inc., Tariff No. 8," transmittal No. 78, FCC 78-36, released February 2, 1978.

[34] While we have already designated this proceeding under sections 201-205, among other provisions of the Act, we believe it appropriate to specify explicitly the applicable issues. As set forth in paras. 20-22 supra, we seek to determine primarily Midwestern's overall revenue requirement and the reasonableness of its allocation of such requirement among its major classes of service, i.e., classes A, B, and C. We are concerned that one class of service not bear a disproportionate share of this revenue requirement over another class of service. Cf. A.T. & T., docket 18128, 66 FCC 2d 587 (1976), recon., 64 FCC 2d 1971 (1977), further recon., FCC 78-104, released February 24, 1978. Our investigation will necessarily include a determination of Midwestern's proper rate of return, capital structure, etc. We will not investigate at this time the class C service rate structure, i.e., the internal allocation of the proper class C revenue requirement among class C users, pending further action in a general rulemaking proceeding which we will soon initiate in that area.

found to be unlawful whether the Commission, pursuant to section 205 of the Act, should prescribe charges, classifications, practices and regulations for the service governed by the tariffs, and if so, what should be prescribed;

25. *It is further ordered,* That a hearing be held in this proceeding at the Commission's offices in Washington, D.C., at a time to be specified, before an administrative law judge to be designated;

26. *It is further ordered,* That the administrative law judge shall upon closing of the record on all issues concerning Midwestern's revenue requirement prepare and issue an initial decision which shall be subject to the submission of exceptions and requests for oral argument, as provided in §§ 1.276 and 1.277 of the Commission's rules, 47 CFR 1.276 and 1.277, after which the Commission shall issue its decision as provided in § 1.282 of those rules, 47 CFR 1.282;[35]

27. *It is further ordered,* That all interested persons wishing to participate may do so by filing a notice of intention to participate on or before September 8, 1978; and

28. *It is further ordered,* That the Secretary shall send a copy of this order by certified mail, return receipt requested, to American Broadcasting Cos., Inc., Columbia Broadcasting Systems, Inc., Midwestern Relay, Inc., and the trial staff, and shall cause a copy to be published in the FEDERAL REGISTER.[36]

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22173 Filed 8-8-78; 8:45 am]

[6712-01]

[Docket Nos. 78-68, etc.; Transmittal Nos. 61, etc.; FCC 78-564]

RCA AMERICAN COMMUNICATIONS, INC.

Memorandum Opinion and Order Instituting Investigation

Adopted: July 27, 1978

Released: August 3, 1978.

By the Commission: Commissioner White concurring in the result.

In the matter of RCA American Communications, Inc., revisions to tariff FCC No. 1, fixed term transponder service, CC docket No. 78-68, transmittal No. 61; American Satellite Corporation, revisions to tariff FCC No. 1, CC docket No. 78-70, transmittal No. 45; The Western Union Telegraph Company, revisions to tariff FCC No. 261, pertaining to video channel service, CC docket No. 78-99, transmittal No. 7314; RCA American Communications, Inc., revisions to tariff FCC No. 1, for fixed term transponder service, transmittal No. 78, RCA American Communications, Inc., revisions to tariff FCC No. 1 for discounts for fixed term voice grade channel service, transmittal No. 80, and RCA American Communications, Inc., revisions to tariff FCC No. 1 for 5-year preemptible transponder service, transmittal No. 83.

1. In *American Satellite Corporation* (ASC), FCC 78-119, released March 10, 1978, we ordered an investigation of tariff schedules for long term service filed by ASC with its transmittal No. 45. We have before us several filings concerning that decision. The first is a petition for clarification or reconsideration filed by American Telephone and Telegraph Co. (AT&T). An opposition to the petition was filed by MCI Telecommunications Corp. (MCI) and comments were filed by the trial staff, Common Carrier Bureau. The second is a motion to consolidate that proceeding (CC docket No. 78-70) with the investigation (Docket No. 20098) instituted by the Commission's *memorandum opinion and order,* 47 FCC 2d 639 (1974). The trial staff filed an opposition to the motion, ASC filed comments, and MCI filed a reply. Finally, the trial staff presents a motion for consolidation of this proceeding with the proceedings in CC dockets No. 78-68 and 78-99, as captioned above. Comments on this motion were filed by AT&T, ASC, and RCA American Communications, Inc. (RCA).

2. We also consider at this time tariff transmittals No. 78, 80, and 83 filed by RCA. In transmittal No. 78, RCA proposes revisions in tariffs FCC Nos. 1, 2, and 4 to offer 10 years fixed term full-time and part-time transponder service. AT&T and Western Union Telegraph Co. (Western Union) filed petitions for suspension and investigation and RCA filed a reply. In transmittal No. 80, RCA seeks to establish rates and regulations for a fixed term voice grade channel service which would offer discounts for customers subscribing to leasing channel service between RCA operating centers for a minimum of 12 months. ASC filed a petition for suspension and investigation and RCA filed a reply. Finally, in transmittal No. 83, RCA proposes a full-time, unprotected preemptible transponder service for a 5-year term. Western Union petitioned for suspension and investigation. RCA filed a reply.

I. CC DOCKET NO. 78-70 CLARIFICATION OF AT&T'S PETITION FOR RECONSIDERATION

3. ASC's transmittal No. 45 now set for investigation in CC docket No. 78-70, proposed a discount for subscribers to long term service on certain ASC routes, subject to a minimum channel and other requirements. In the memorandum opinion and order cited above we did not reject or suspend the tariff, but ordered an investigation, specifically of the minimum channel requirement, the lack of a termination charge during the 1-year minimum service period, and the requirement of 6 months notice by a customer to avoid automatic renewal of the long term commitment. We also stated that the investigation would provide an opportunity to address many of the broad issues presented by long term tariffs and could be helpful in our initial development of policies and guidelines in this area.

4. AT&T was not a party in the proceeding prior to our decision to designate for hearing in *American Statellite,* but requests in its petition that the Commission clarify or reconsider paragraph 14 of the Opinion and Order, which addressed a concern with regard to an offering of long term service by a dominant carrier.[1] Under § 1.106(a)(1) of the Commission's rules, "A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding." AT&T's petition plainly does not relate to any adverse ruling with respect to AT&T's participation in the hearing designated by our Order. AT&T has in fact filed a separate Notice of Intent to Participate in the hearing. Nor, we believe, does styling the petition as one for clarification or reconsideration provide any basis for ignoring the specific terms of § 1.106(a)(1). Even if we were to consider AT&T's petition, there would appear to be no reason to clarify or reconsider paragraph 14. It was unnecessary for us to consider in the ASC Order whether our decision would differ were AT&T to offer a similar long term service, and we did

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[35] We shall instruct the Judge by further order on the appropriate handling of the class C rate structure issue. See supra, note 36.

[36] We also require Midwestern to promptly serve a copy of our order herein on all subscribers to its various service classes so that they may participate if they desire.

[1] In *American Satellite Corp.,* FCC 78-119, para. 14, released March 10, 1978, as stated: "Another concern expressed by the petitioners, particularly MCI, is that if a dominant carrier such as AT&T were permitted to offer long term service, the result would be grossly anticompetitive and repressive to the communications industry. This concern is at present speculative, but in any event the circumstances of the present offering are distinctly different from any case involving a dominant carrier, for the reasons noted in para. 10 above. Thus, any ruling in this case would not be a significant precedent for a dominant carrier providing both monopoly and competitive services."

not reach the issue. Accordingly, we remain of the opinion that the ruling would not be a significant precedent for a dominant carrier providing both monopoly and competitive services. Therefore we will dismiss AT&T's petition.

II. MCI's Motion to Consolidate

5. MCI requests in its motion that the Commission consolidate the proceedings in CC docket No. 78-70 with those in docket No. 20098. In the latter proceeding, *Western Union Telegraph Co.*, 47 FCC 2d 639 (1974), we determined that "substantial questions exist whether the existing rates for domestic satellite service, and those proposed * * * are in accord with the applicable statutory requirements set out in section 201-203 of the Communications Act," and set certain proposed rates for investigation. No hearing has been scheduled for that proceeding, primarily because we have lacked adequate experience with communications satellite market economics and operations for an effective inquiry into proper ratemaking principles. MCI urges that a consolidated hearing is warranted to address the issue of cost insensitive pricing which it cites as a major underlying issue in both proceedings. In docket 20098, the issue raised concerned the distance-insensitive nature of satellite technology and the legality of distance-based rates. In CC docket No. 78-70, one of the issues is whether a minimum channel requirement for a long-term service discount is justifiable where it is not clear that the requirement has a basis in cost differences.

6. In *American Satellite*, we noted MCI's proposal that the hearing it claimed was necessary should be consolidated with docket No. 20098, but we did not find that the concerns expressed by MCI warranted a consolidation. The issues set for investigation in CC docket No. 78-70 all basically concern long-term tariffs and we stated our hope that the proceeding would be helpful in the development of policies and guidelines in this area. Those issues bear only a tangential relationship to the issues in docket No. 20098 which do not concern long-term tariffs. Therefore, we will deny MCI's motion to consolidate.

III. RCA's Transmittals No. 78, 80, and 83

7. We next consider three tariff transmittals filed by RCA, each proposing some form of long term satellite communication service. In CC docket No. 78-68, an investigation has already been instituted on an RCA tariff proposing new rates and regulations for part-time transponder service over a 6-year commitment term. This investigation is to consider questions of whether the proposed service is unreasonably discriminatory vis-a vis the carrier's other television services, whether the escalating rate structure in the proposed tariff is discriminatory and whether the substantial termination liabilities imposed by the tariff are unjust and unreasonable.

8. AT&T and Western Union urge in their petitions for suspension and investigation that the same concerns also apply to RCA's transmittal No. 78. RCA proposes in that transmittal full-time and part-time daily transponder services similar to those set for investigation in CC docket No. 78-68. The transmittal proposes three new services in all, a 10-year full-time service, a 10-year full-time service for other common carriers, and a 10-year part-time service. As in the docketed case, these services are for a fixed term with an escalating rate structure and substantial termination liabilities. For example, the rate for the part-time service of 12 hours a day are as follows for the minimum of two transponders:

	Monthly rate	Termination liability
Year 1	$56,050.00	$967,000
Year 2	67,300.00	967,000
Year 3	89,800.00	810,000
Year 4	108,133.34	635,000
Year 5	116,466.67	360,000
Year 6	123,550.00	180,000
Year 7	87,300.00	0
Year 8	95,633.34	0
Year 9	103,966.67	0
Year 10	112,300.00	0

The customer is also committed to pay for at least two years of service in addition to any termination liability.[2] A customer for RCA's present 6-year term services, including those set for investigation in CC docket No. 78-68, may switch to 10-year term service without liability and RCA states that it expects to cancel its full-time and part-time 6-year term services and its satellite program distribution service after its present customers switch to ten year term service. The rates for part-time 10-year term service are about 10 percent less than for the equivalent 6-year term service, and the customer receives a third more hours of service per day (12 hours vs 9 hours).

9. From our examination of transmittal No. 78, it is clear that these proposed tariff revisions are very similar to the tariffs set for investigation in docket No. 78-68 and, indeed are expected largely to replace them. RCA defends these rates as designed to permit the entry of customers into the satellite services market at an economical price. However, this sort of departure from cost of service pricing principles is identical to that found to warrant investigation in CC docket No. 78-68. The same issues are also presented by this transmittal in regard to discrimination and termination liability. RCA has modified that liability somewhat, but the payments required of a customer who terminates before the first 6 years of the term remain substantial and in some cases are larger than in the tariff set for investigation.[3] RCA states that it developed the schedule of termination charges so as to insure that when the termination charge is added to the revenue received by the carrier, the total payment will approximate the average price charged the customer over the first 6 years of service, but it provides no cost information or other support for the schedule of charges. In fact, even assuming arguendo that this is a valid basis for setting termination liability, it appears that the actual termination liability might often be substantially higher than the amount which RCA's stated principle would seem to justify.[4]

10. RCA also contends that the issue of whether its part-time transponder

[2] The 10-year full-time services have similar rate structure, with rates increasing from $46,666.67 per month per transponder in the first year to $83,500 in years 5 and 6 and $87,666.67 in years 7 to 10. The termination liability for single transponder service decreases from $492,000 in year 1 to $50,000 in years 5 and 6, and falls to zero thereafter. There is no 2-year minimum service requirement as in the part-time service, only a requirement of 90 days written notice.

[3] For example, under the 6-year term tariff already set for investigation, the customer could cancel at any time upon 30 days notice based upon a termination liability of $1.25 million during the first 4 years and $750,000 during the fifth year. Under the transmittal No. 78 part-time tariff, the customer may cancel upon 90 days notice, but must pay the full monthly charges at least for the first 2 years in addition to a termination liability of $967,000. The monthly charges for two transponders for the first 2 years total $1.48 million, and a customer who terminates service during the first year or early in the second year could be charged with paying a substantial part of that sum in addition to the termination liability, and thus be charged a greater total amount than under the tariff already set for investigation. The proposed tarriff also imposes a termination liability of $180,000 during the sixth year, whereas no liability was imposed during the sixth year under the tariff set for investigation.

[4] For example, if the customer terminated service after 1 year, he would have paid $672,600 for services received. The average price for a year's service during the first 6 years of this proposed service is $1,122,600. The difference which RCA claims its termination liability is intended to recover is thus $450,000. Yet the actual termination liability would be $967,000 and the customer would also be required to pay the full charges for the second year, i.e., $807,600. Thus, the customer's total liability would be over $1.7 million, almost 4 times the amount which RCA would seem to be due under its stated principle for determining termination liability.

service and its television service are like services it resolved by information from customers that at least two of its part-time transponders and one of its full-time transponders will be used for televison and additional 15 kHz channels at the same time, a type of use which it states would not be feasible under its television service offering. In our view, such factual claims can best be examined and evaluated at the hearing already scheduled to consider this issue and the other issues presented in CC docket No. 78-68.

11. In general, we conclude that the reasons which prompted the investigation of RCA's transmittal No. 61 in CC docket No. 78-68 apply equally to this filing,[5] and it is apparent that any investigation of this tariff will involve issues substantially identical to those already set for investigation in that docket.

12. We reach the same conclusion as to RCA's transmittal No. 83, which, as Western Union contends in its petition to suspend and investigate, proposes another similar transponder service. Here, RCA proposes full-time preemptible transponder service for a 5 year term.[6] The monthly charge per transponder would escalate from $34,167 in year 1 to $53,750 in year 5. As in RCA's proposed 10 year service, the customer would be required to pay for a minimum 2 years service, and would also be subject to termination liabilities which, under this tariff, would decline from $180,000 in the first 2 years to $65,000 in the fifth year. The proposed tariff thus presents a very similar rate structure, and issues of termination liability and possible restrictions upon a customer's choice of service alternatives which are substantially identical to those in RCA's transmittals No. 61 and 78. Therefore, a similar investigation is equally warranted.

13. Finally, in its transmittal No. 80, RCA proposes a fixed-term voice grade channel service which provides discount for customers who subscribe to service between RCA operating centers for a minimum of 12 months. The discount is 5 percent for 1 to 11 channels, 25 percent for 12 to 23 channels, and 35 percent for 24 channels and more. RCA states that the tariff was filed as a competitive response to ASC's long term service offering, now under investigation in CC docket No. 78-70. ASC petitions for a 1 day suspension and for an investigation of the proposed tariff revisions, and RCA states in reply that it does not oppose ASC's request for investigation, but believes that there is no purpose to be served by a one day suspension. It is apparent that this proposed tariff is very similar to the ASC tariff set for investigation and presents essentially identical issues for consideration. For that reason, we will direct that this transmittal be set for investigation and consolidated with the pending investigation in CC docket No. 78-70.

IV. Conclusion

14. Each of these RCA transmittals warrant investigation under our present rules and policies for the filing of data and information demonstrating that proposed rates are cost justified and that the terms and conditions of service are just and reasonable. Each is also similar to other tariffs filed by specialized, domestic satellite, and value-added carriers which have also required investigation recently, including the docketed cases captioned above, ASC's transmittals No. 56 and 60, FCC 78-412, released June 26, 1978, and Western Union's transmittals No. 7386 and 7390, FCC 78——, released. Generally, these transmittals propose either new services or lower rates for existing services. It has long been Commission policy to allow competition among carriers of this sort, to stimulate innovative techniques and services and lower rates. We have also stated our policy of exercising regulatory flexibility for these carriers, to permit reasonable freedom to compete. We have not, however, specified in any consistent way the limits of that flexibility, or which practices may be accepted as just and reasonable within the context of an orderly competitive market. Largely for that reason, we have instituted a number of investigations of proposed tariffs in response to petitions by competing carriers, including the investigations of the six tariffs captioned above. Some of the carriers' petitions have addressed issues of genuine concern to customers and to the public generally, but many others have challenged the details in the cost support material. Some petitions seems also to be filed to some degree as a sort of competitive harassment. In any event, these filings and petitions impose major and costly burdens upon the carriers and the Commission, burdens which could be reduced substantially if the proper scope and limits for our exercise of regulatory concern toward the tariffs of these carriers were more clearly defined. We could reduce the burdens of regulation and give greater effect to fair competition, while directing our attention to matters of more substantial importance. The three dockets listed in the caption were established to investigate specific tariff provisions, and it is clear that the three new RCA transmittals should logically be considered and consolidated with those existing proceedings for investigation. The issues in transmittals No. 78 and 83 are virtually identical to those set for investigation in CC docket No. 78-68, and transmittal No. 80 is a competitive response which is substantially similar to the ASC tariff under investigation in CC docket No. 78-70. Consistent examination of these issues and fairness to carriers and other interested parties, as well as administrative efficiency, requires that separate proceedings not be instituted to consider nearly identical issues. We will accordingly direct that the investigations of RCA's tariffs be consolidated with the appropriate docketed cases mentioned above. Since there is no apparent likelihood that RCA's customers will suffer harm from these tariffs, we conclude here, as we did in those docketed cases, that no suspension of these tariffs is required.

15. However, the number of these recent filings indicates that these investigations, though warranted by our present rules and policies, might well be unwieldy and time-consuming because they must consider both basic principles for the regulation of competitive offerings and the specific details of a large number of individual tariffs. This could well be the case even if we grant the trial staff's motion to consolidate.[7] Therefore, rather than proceed with a number of individual investigations, which are likely to be somewhat duplicative and time consuming, we plan to institute a broad rulemaking proceeding within the next few months to consider the adoption of guidelines for competitive tariff offerings by specialized, domestic satellite, and value-added carriers. This proceeding will likely address many of the issues presented by these current cases, but within a broader context and may resolve many of the issues presented by recent filings. While it may still be useful to proceed

[5] In "RCA American Communications, Inc.", FCC 78-120, adopted February 14, 1978, we stated: "We note that this charge appears to go beyond any resonable costs incurred by the carrier as a result of the early termination of service and may include a return for services not rendered. We are equally concerned that the lengthy service commitment offered in conjunction with this substantial charge for esrly termination could severely restrict the customer's choice of service alternatives offered by other competing carriers and thus may have an undesirable effect on competition among carriers. Therefore, these provisions are highly suspect under the standards of section 201(b) of the Act which prohibits unjust and unreasonable charges and regulations."

[6] "Preemptible" service refers to a service provided over channels that are subject to interruption and delayed transmission at any time by the carrier to restore protected service or for other service needs.

[7] The trial staff recommended, from among a list of alternatives, that the three dockets be assigned to a single judge, but that the cases proceed separately and that the presiding officer be given discretion to consolidate the three proceedings to the extent that such consolidation is found to be warranted.

with some or all of these investigations simultaneously with the broader rulemaking, at the present time it seems advisable to hold these proceedings in abeyance at least until we issue the forthcoming notice of proposed rulemaking. At that time we will be in a better position to decide if and in what manner to proceed with these investigations, without unnecessary duplication of effort and waste of resources. For that reason, we will defer consideration of the trial staff's motion to consolidate and will direct that further proceedings in CC dockets No. 78-68, 78-70, and 78-99 be held in abeyance until further order of the Commission.

16. In accordance with the foregoing: *It is ordered,* That A.T. & T.'s petition for clarification or reconsideration in CC docket No. 78-70 is dismissed;

17. *It is further ordered,* That MCI's motion to consolidate CC docket No. 78-70 with docket No. 20098 is denied;

18. *It is further ordered,* That, pursuant to sections 4(i), 4(j), 201, 202, 204, 205, and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of the tariff schedules filed by RCA American Communications, Inc. with transmittals No. 78 and 83, including any cancellations, amendments, or re-issues thereof, and including any cancellations, amendments, or re-issues of RCA American Communications, Inc. transmittal No. 61, and that this investigation is consolidated with the investigation in CC docket No. 78-68;

19. *It is further ordered,* That pursuant to sections 4(i), 4(j), 201, 202, 204, 205 and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of the tariff schedules filed by RCA American Communications, Inc. with transmittal No. 80, including any cancellations, amendments, or reissues thereof, and that this investigation is consolidated with the investigation in CC docket No. 78-70;

20. *It is further ordered,* That the proceedings in CC dockets No. 78-68, 78-70, and 78-99 be held in abeyance until further Commission order;

21. *It is further ordered,* That all other petitions filed with respect to RCA American Communications, Inc. transmittals No. 78, 80, and 83 are granted to the extent that they are consistent with this opinion but are otherwise denied.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22172 Filed 8-8-78; 8:45 am]

[6712-01]

[FCC 78-584]

USE BY CONVENTIONAL LAND MOBILE SYSTEMS IN THE 800 MHZ BAND

Order Regarding Release of Fifty 25 kHz Channel Pairs from the Reserve Pool

Adopted: August 1, 1978.

Released: August 3, 1978.

1. In its second report and order in docket No. 18262, adopted May 1, 1974 (46 FCC 2d 752) the Commission authorized, in the 800 MHz band, one hundred 25 kHz channel pairs for conventional land mobile systems, two hundred 25 kHz channel pairs for trunked systems and three hundred 25 kHz channel pairs were temporarily reserved to give the Commission an opportunity to study development trends in the available spectrum.

2. The past year has shown a rapid growth in the licensing of 800 MHz conventional use systems in the major urban markets. As a result, all of the 100 channel pairs allocated for conventional systems in the Chicago area have been assigned; we are fast approaching that stage in other major markets. In order to grant relief in these major markets, the Commission is hereby releasing fifty 25 kHz channel pairs from the reserve pool for use by conventional land mobile systems. These frequencies will be authorized in accordance with the rules and procedures established in docket 18262.

3. The Commission does not anticipate releasing any additional frequencies from the reserve pool for conventional use systems until it has had an opportunity to study and analyze the development and practicality of trunked systems for use by the land mobile community.

4. Authority for this action is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. Because applications in Chicago currently cannot be granted, the Commission believes that it is in the public interest to make these frequencies available immediately. Therefore, the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

Accordingly, it is ordered, Effective upon release of this order, that fifty 25 kHz channel pairs from the reserve pool in the 800 MHz band are released for use by conventional land mobile systems.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22171 Filed 8-8-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

[Reg. C; Docket No. R-0143]

CONNECTICUT

Order Approving Exemption Application Under Home Mortgage Disclosure Act of 1975

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final order of exemption.

SUMMARY: The Board hereby exempts from the disclosure requirements of the Home Mortgage Disclosure Act of 1975 and its implementing regulation C all Connecticut-chartered depository institutions that are subject to the Connecticut Home Mortgage Disclosure Act.

EFFECTIVE DATE: September 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Anne Geary, Chief Staff Attorney, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2761.

SUPPLEMENTARY INFORMATION: On April 24, 1978, the Board published in the FEDERAL REGISTER (43 FR 17402) notice of an application by the State of Connecticut for exemption from the disclosure requirements of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801-2809) as implemented by regulation C (12 CFR 203). The application was filed pursuant to section 306(b) of the act (12 U.S.C. 2805(b)) and § 203.3(a)(3) of, and the supplement to, regulation C (12 CFR 203.3(a)(3) and 203 Supplement) and was based upon the requirements of the Connecticut Home Mortgage Disclosure Act (Pub. Act No. 77-153 (May 20, 1977)) and the implementing regulations of the Connecticut Banking Department.

The Board received two comments on the application, from the Federal Reserve Banks of New York and Boston; both recommended that the exemption be granted.

ORDER

The Connecticut Bank Commissioner, on behalf of the State of Connecticut, has applied for an exemption on the ground that the Connecticut act and regulations impose requirements substantially similar to those imposed by the Federal act and regulations and that they include adequate provisions for enforcement of those requirements.

In reviewing an application for application for exemption, the Board is directed to consider two primary factors (12 U.S.C. 2805(b)). First, the

Board must determine whether the State's laws impose disclosure requirements which are substantially similar to those imposed by the Federal act. Second, the Board must consider whether State law contains adequate provisions for enforcement of those requirements.

Examination of the Connecticut act and regulations indicates that they impose substantially the same disclosure requirements as the Federal act and regulation C. The data required to be disclosed and the format in which it is to be disclosed are virtually identical under the Connecticut and Federal laws. While there are minor differences, the Board has determined that they do not affect the substantial similarity between the Federal and State laws with respect to the requirements imposed by the Federal act.

With regard to enforcement, the Connecticut act provides for the issuance of cease and desist orders and the imposition of monetary penalties in appropriate cases for violation of its provisions. The Bank Commissioner is authorized to conduct investigations into alleged violations, hold hearings, and issue subpenas. Institutions are required to file the disclosure statements with the Bank Commissioner, in addition to making them available to the public.

On the basis of record, the Board finds that the Connecticut act imposes disclosure requirements that are substantially similar to those imposed under the Federal act and that the Connecticut act contains adequate provisions for enforcement of those requirements. Accordingly, the application is hereby approved and all Connecticut-chartered bank and trust companies, savings banks, building and loan associations, savings and loan asociations, and credit unions that are subject to the Connecticut Home Mortgage Disclosure Act and the implementing regulations of the Connecticut Banking Department are hereby exempted, effective September 11, 1978, from the data compilation and disclosure requirements of the Home Mortgage Disclosure Act, as implemented by §§ 203.4 and 203.5 of regulation C. This determination is subject to the provisions of paragraph (e) of the supplement to regulation C. Pursuant to that paragraph, the Board reserves the right to revoke any exemption if at any time it determines that applicable State law in fact does not impose requirements that are substantially similar to those imposed under the Home Mortgage Disclosure Act or that such law does not contain adequate provisions for enforcement. As required by paragraph (b)(4) of the supplement, the applicant undertakes to inform the Board of any change in the State law or regulation within 30 days of such change.

By order of the Board of Governors, August 2, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-22185 Filed 8-8-78; 8:45 am]

[6210-01]

FIRST ILLINOIS CORP.

Proposed Acquisition of First Illinois Life Insurance Co.

First Illinois Corp., Evanston, Ill., 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 First Illinois Life Insurance Co., Phoenix, Ariz. Notice of the application was published on June 24, 1978 in *Chicago Sun Times*, a newspaper circulated in Chicago, Ill.

Applicant states that the proposed subsidiary would engage in the activities of underwriting, as reinsurer, credit life insurance and credit accident and health insurance on extensions of credit by the applicant's credit-granting subsidiary. 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 inefficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

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 18, 1978.

Board of Governors of the Federal Reserve System, August 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-22186 Filed 8-8-78; 8:45 am]

[6210-01]

TRANS TEXAS BANCORP., INC.

Proposed Acquisition of Trans Commonwealth Associates, Inc.

Trans Texas Bancorp., Inc., El Paso, Tex., 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 Trans Commonwealth Associates, Inc., El Paso, Tex. Notice of the application was published on July 6, 1978, in the *El Paso Times and Herald-Post*, a newspaper circulated in El Paso, Tex.

Applicant states that the proposed subsidiary would engage in the activities of providing personal financial planning to the extent of:

1. Analyzing family assets and liabilities, family composition, expectations and aspirations, income and expenses, and estate provisions;
2. Cooperating and conferring with the family's attorney, accountant, tax and investment advisers, and trust administrator; and
3. Preparing a plan for conservation and allocation of all foreseeable income in detail for the succeeding year and for five years; recommending appropriate structuring of trusts; preparing tax liability forecasts and payment provisions; preparing a monthly reporting form to track the year's financial plan; reviewing the plan and progress throughout the year; and recommending revisions when necessary.

While certain of these activities have been specified by the Board in § 225.4(a) of regulation Y as permissible for bank holding companies, not all elements of the described activities have been specifically identified as permissible under that regulation. To the extent this proposal may involve activities not previously determined to be permissible, it is encompassed within a proposed amendment of § 225.4(a) of regulation Y that the Board recently published for public comment (43 FR 7440).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a

statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

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 September 1, 1978.

Board of Governors of the Federal Reserve System, August 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-22187 Filed 8-8-78; 8:45 am]

[4110-83]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

GRADUATE MEDICAL EDUCATION NATIONAL ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1978:

Name: Graduate Medical Education National Advisory Committee.
Date and time: August 25, 1978, 9 a.m.
Place: Room 529A, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, D.C. 20201.
Open for entire meeting.

Purpose. The Graduate Medical Education National Advisory Committee is responsible for advising and making recommendations with respect to: (1) Present and future supply and requirements of physicians by specialty and geographic location; (2) ranges and types of numbers of graduate training opportunities needed to approach a more desirable distribution of physician services; and (3) the impact of various activities which influence specialty distribution and the availability of training opportunities including systems of reimbursement and the financing of graduate medical education.

Agenda. A review of developments which have occurred since the last meeting will be conducted with respect to: A manpower model for the projection of physician specialty requirements, the financing of graduate medical education, and the use of non-physician providers for the delivery of health services. Plans and activities to be conducted over the next four months will be discussed.

A portion of the meeting will be available for comments and participation by the public. Due to limited seating, attendance by the public will be provided on a first-come, first-serve basis.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Robert Graham, M.D., Bureau of Health Manpower, Room 10-37, Center Buiding, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7202.

Agenda items are subject to change as priorities dictate.

Dated: August 2, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-22201 Filed 8-8-78; 8:45 am]

[4110-02]

Office of Education

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice.

SUMMARY: The notice sets forth the schedule and proposed agenda of the forthcoming meeting of the National Advisory Council on Indian Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix I, section 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Full Council meeting: August 24, 1978, 8:30 a.m. to 2:30 p.m., and August 25, 1978, 8:30 a.m. to 5 p.m., and August 26, 1978, 8:30 a.m. to 3 p.m. Committee meetings: To be announced.

ADDRESS: Suite 326, 425 13th Street NW., Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT:

Stuart A. Tonemah, Executive Director, National Advisory Council on Indian Education, Suite 326, 425 13th Street NW, Washington, D.C. 20004, 202-376-8882.

The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act, title IV of Pub. L. 92-318, (20 U.S.C. 1221g).

The Council is directed to: (1) Submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of the Office of Indian Education/OE;

(2) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including title III of the act of September 30, 1950 (Pub. L. 81-874) and section 810, title VIII of the Elementary and Secondary Education Act of 1965 (as added by title IV of Pub. L. 92-318 and amended by Pub. L. 93-380), and with respect to adequate funding thereof;

(3) Review applications for assistance under title III of the act of September 30, 1950 (Pub. L. 81-874), section 810 of title VIII of the Elementary and Secondary Education Act of 1965 as amended and section 314 of the Adult Education Act (as added by title IV of Pub. L. 92-318), and make recommendations to the Commissioner with respect to their approval;

(4) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(5) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(6) Assist the Commissioner of Education in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the act of September 30, 1950 (Pub. L. 81-874) as added by title IV, part A, of Pub. L. 92-318;

(7) Submit to Congress not later than June 30 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such program; and

(8) Be consulted by the Commissioner of Education regarding the definition of the term "Indian," as follows:

Sec. 453 (title IV, Pub. L. 92-318). For the purpose of this title, the term "Indian" means any individual who: (1) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo, or Aleut, or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term "Indian."

The meeting on August 24-26, 1978, will be open to the public. This meeting will be held at Suite 326, 425 13th Street NW., Washington, D.C.

The proposed agenda includes:

(1) Action on previous meeting minutes.

(2) Executive Director's report.

(3) Update on pending legislation.
(4) Committee and task force reports.
(5) Special reports from the field.
(6) Review of NACIE's fiscal year 1978 budget.
(7) Plans for future NACIE activities.
(8) Regular Council business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 425 13th Street NW., Suite 326, Washington, D.C. 20004.

Dated: August 4, 1978, signed at Washington, D.C.

STUART A. TONEMAH,
Executive Director, National Advisory Council on Indian Education.

[FR Doc. 78-22257 Filed 8-8-78; 8:45 am]

[4110-07]

Social Security Administration

[Docket No. 78-1]

CONFORMITY OF PUBLIC ASSISTANCE PLAN OF THE STATE OF VIRGINIA WITH THE SOCIAL SECURITY ACT

Hearing

Notice of hearing is hereby given as set forth in the following letter that has been sent to the Virginia Department of Welfare:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., August 2, 1978.

IFA-21

Mr. WILLIAM L. LUKHARD,
Commissioner, Department of Welfare, 8007 Discovery Drive, P.O. Box K-176, Richmond, Va. 23288.

DEAR MR. LUKHARD: This letter is in response to your request for a formal hearing in reconsideration of the disapproval of Virginia State Plan Transmittal 75-51. This plan submittal dealt with the manner in which earned income was reported and counted and, among other things, provided that changes in earnings of less than $50 need not be reported by recipients to the State agency between periods of eligibility redetermination. The plan submittal was disapproved by the former Commissioner of Social Security James B. Cardwell on June 15, 1977, as being contrary to Federal policy.

As you know there have been extensive discussions and correspondence by Federal Regional and Central Office staff with you and your staff about this issue, but the problem has not been satisfactorily resolved. Although Federal officials are of the opinion that the State is only entitled to an informal conference under the procedures in 45 CFR 201.14 in reconsidering this disapproval, you maintain that the State is entitled to a formal hearing under part 213 procedures.

After a careful review of the circumstances surrounding the disapproval of this plan amendment, I have decided to grant you a reconsideration in the form of a formal hearing in order to avoid further delay and to finally resolve this issue which has been pending for over 1 year. The reconsideration will be pursuant to section 1116 (a) and (b) of the Social Security Act, as if the plan amendment was submitted for approval with a request that it be treated as a new State plan. The hearing will be conducted in accordance with the practice and procedures set forth in 45 CFR part 213, as you requested.

I have set 10 a.m. on September 6, 1978, at the Department of Health, Education, and Welfare, Room 5051 North Building, 330 Independence Avenue SW., Washington, D.C. 20201 as the time and place of the hearing.

We anticipate that the issue involved in the hearing will be:

Whether the State's proposed AFDC plan amendment concerning how earned income shall be reported and counted is in violation of section 402(a)(5) of the Social Security Act, section 402(a)(7) of the Social Security Act, 45 CFR 206.10(a)(9), 45 CFR 233.20, and other relevant provisions of the act and regulations.

Please let me know if the time set for the hearing is agreeable to you. If your agency would like to have a prehearing conference to define the issue further, to explore the possibility of stipulation, or for any other purpose that will contribute to an expeditious resolution of the issue, please advise.

Sincerely yours,

DON I. WORTMAN,
Acting Commissioner of Social Security.

Interested persons or groups may request to participate in the hearing either as a party or as amicus curiae. Any individual or group may request to participate as a party if the issue to be considered at the hearing has caused them injury and their interests were intended to be protected by the governing Federal Statute. Any individual or group requesting to participate in the hearing as a party shall file a petition with the Social Security Administration Hearing Clerk, Room 4111 MES, Department of Health, Education, and Welfare, 330 C Street SW., Washington, D.C. 20201, within 15 days from the publication of this notice in the FEDERAL REGISTER. The petition shall concisely state: (a) Petitioner's interest in the hearing, (b) who will represent the petitioneer, (c) the issue on which petitioner intends to participate, and (d) whether petitioner intends to present witnesses.

Any individual or group requesting to participate as amicus curiae shall file a petition with the Social Security Administration Hearing Clerk at the above address at any time before commencement of the hearing, stating concisely (a) the petitioner's interest in the hearing, (b) who will represent the petitioner, and (c) the issue on which petitioner intends to present argument.

Dated: August 2, 1978.

DON I. WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-22180 Filed 8-8-78; 8:45 am]

[1505-01]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 8879]

COLORADO

Termination of Proposed Withdrawal and Reservation of Lands

Correction

In FR Doc. 78-12375, appearing at page 19725 in the issue for Monday, May 8, 1978, the description of the land in Sec. 32 for the Aqua Fria Lake Recreation Area should read as follows:

"Sec. 32: N½NW¼NW¼", instead of "Sec. 32: N½NE¼NE¼".

[4310-84]

[INT DES 78-29]

VEGETATION MANAGEMENT WITH HERBICIDES; WESTERN OREGON

Availability of Draft Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared an environmental statement for the purposed use of registered herbicides on Bureau-administered lands in western Oregon.

The proposal involves the use of chemical herbicides on approximately 74,500 acres annually to control vegetation interfering with the establishment and growth of forest plantations, maintenance of rights-of-ways, maintenance of improvements, and for the control of poisonous and noxious plants.

Copies are available for inspection and a limited number of single copies may be obtained from the following locations:

Office of Information, Bureau of Land Management, Interior Building, 18th and C Streets NW., Washington, D.C. 20240, telephone 202-343-5717.

Oregon State Office, Bureau of Land Management, 729 Northeast Oregon Street, Portland, Oreg. 97208.

Salem District Office, 3550 Liberty Road South, P.O. Box 3227, Salem, Oreg. 97302, telephone 503-399-5646.

Coos Bay District Office, 333 South Fourth Street, P.O. Box 1139, Coos Bay, Oreg. 97420, telephone 503-269-5880.

Eugene District Office, 1255 Pearl Street, P.O. Box 10226, Eugene, Oreg. 97401, telephone 503-687-6650.

Medford District Office, 310 West 6th Street, Medford, Oreg. 97501, telephone 503-779-2351.

Roseburg District Office, 777 Northwest Garden Valley Boulevard, Roseburg, Oreg. 97470, telephone 503-672-4491.

Copies are available for inspection only at the following locations:

University of Oregon Library, Eugene, Oreg.
Oregon State University Library, Corvallis, Oreg.
Oregon State Library, Salem, Oreg.
Public Library, Salem, Oreg.
Public Library, Eugene, Oreg.
Public Library, Roseburg, Oreg.
Public Library, Coos Bay, Oreg.
Public Library, Medford, Oreg.
Public Library, Grants Pass, Oreg.
Public Library, Klamath Falls, Oreg.
Public Library, Cottage Grove, Oreg.
County Libraries, Western Oreg.

Written comments should be submitted to the State Director, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, Oreg. 97208.

Comments must be received on or before September 25, 1978.

LARRY E. MEIEROTTE,
Deputy Assistant Secretary, of the Interior.

[FR Doc. 78-22226 Filed 8-8-78; 8:45 am]

[4310-09]

Bureau of Reclamation

TRUCKEE RIVER

Public Notice of Proposed Administrative Transfer of Land to the U.S. Forest Service

Notice is hereby given that under the provisions of section 7(c) of Pub. L. 89-72 (79 Stat. 216), the Bureau of Reclamation proposes to transfer administrative jurisdiction over a 64-acre tract of land at the Truckee River outlet of Lake Tahoe at Tahoe City, Calif., to the U.S. Forest Service for the purposes of management for public recreation.

Prior to the completion of this transfer, scheduled for October 30, 1978, all current encumbrances on the property must be removed, unless approved by U.S. Forest Service and Bureau of Reclamation officials.

This transfer was agreed to in principle by both agencies on January 31, 1978.

Any comments should be directed to: Regional Director, Code 420, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, Calif. 95825.

Comments will be received at this address until September 8, 1978.

Dated: August 7, 1978.

R. KEITH HIGGINSON,
Commissioner of Reclamation.

[FR Doc. 78-22406 Filed 8-8-78; 10:04 am]

[4710-14]

INTERNATIONAL JOINT COMMISSION

UNITED STATES AND CANADA

REGULATION OF LAKE CHAMPLAIN AND THE UPPER RICHELIEU RIVER

Public Hearings

The International Joint Commission will conduct a second round of public hearings at the times and places noted below to obtain further views of the public about the International Champlain-Richelieu Board's report concerning regulation of Lake Champlain and the Upper Richelieu River.

Priority will be given to those members of the public who indicated during the first round of hearings in June a desire to testify and who were unable to speak because of time limitations. The Board will respond to questios raised during the first round of hearings and attempt to clarify for the public and the Commission several significant issues which have emerged.

Time allotted to each witness may be limited. If a written statement will take longer than 10 minutes to present, a summary statement should be given and the full statement submited for the record. When a written statement is presented, 30 copies should be provided, if possible, for distribution to the news media and for the Commission purposes.

Times and Places of Hearings

Ramada Inn, 1117 Williston Road, South Burlington, Vt., September 26, 1978, 2 p.m. and 7:30 p.m.

St. Jean City Hall, 188 Jacques Cartier Street, St. Jean, Quebec, September 28, 1978, 2 p.m. and 7:30 p.m.

William A. Bullard, Secretary, U.S. Section, International Joint Commission, Suite 200, 1717 H Street NW., Washington, D.C. 20440. STOP 86, 202-296-2142.

David G. Chance, Secretary, Canadian Section, International Joint Commission, 18th Floor, Berger Building, 100 Mercalf Street, Ottawa, Ontario KIP 5M1, 613-992-2945.

AUGUST 1, 1978.

WILLIAM A. BULLARD,
Secretary, U.S. Section.

[FR Doc. 78-22144 Filed 8-7-78; 8:45 am]

[7020-02]

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-57]

CERTAIN CATTLE WHIPS

Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on July 7, 1978 (and amended on July 19, 1978), under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Stockmen's Inc., Lawton, Ia. 51030, alleging that unfair methods of competition and unfair acts exist in the importation of certain cattle whips into the United States, or in their sale, by reason of the alleged coverage of such cattle whips by the claims of U.S. Letters Patent 3,356,294. The amended complaint alleges such unfair methods of competition and unfair acts have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests permanent exclusion from entry into the United States of the articles in question.

Having considered the amended complaint, the United States International Trade Commission on August 3, 1978, *Ordered:*

1. That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c) whether, on the basis of the allegations set forth in the amended complaint and the evidence adduced, there is a violation of subsection (a) of this section in the unauthorized importation of certain cattle whips into the United States, or in their sale, by reason of the alleged coverage of such cattle whips by the claims of U.S. Letters Patent 3,356,294, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

2. That, for the purpose of this investigation so instituted, the following are hereby named as parties:

a. The complainant is

Stockmen's Inc.,
P.O. Box 244,
Lawton, Ia. 51030.

b. The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the complaint and this notice are to be served:

i. The Action Co.,
P.O. Box 528,
McKinney, Tex. 75069.

ii. Skyline Imports, Ltd.,

P.O. Box 856,
Red Deer,
Alberta, Canada.

c. Robert M. M. Seto, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation.

3. That, for the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the United States International Trade Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the United States International Trade Commission if received not later than 20 days after the date of service of the amended complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and of this notice and will authorize the presiding officer and the United States International Trade Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The amended complaint is available for inspection by interested persons at the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the New York City office of the United States International Trade Commission, 6 World Trade Center.

By order of the Commission.

Issued: August 4, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-22253 Filed 8-8-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-39]

CERTAIN LUGGAGE PRODUCTS

Commission Order and Opinions

PROCEDURAL HISTORY

A complaint was filed with the United States International Trade Commission on October 28, 1977, and an amendment thereto was filed on November 11, 1977, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Airway Industries, Inc., Ellwood City, Pa. 16117, alleging that unfair methods of competition and unfair acts exist in the importation of certain luggage products into the United States or in their sale by reason of the alleged coverage of such articles by the claim of U.S. Letters Patent Des. 242,181, which is owned by the complainant. The amended complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requested both a permanent exclusion order and a temporary exclusion order, except under bond, of the imports in question pending the investigation of this matter.

After consideration of the amended complaint the Commission on November 23, 1977, ordered that an investigation be instituted pursuant to subsection (b) of section 337 to determine, under subsection (c) whether, on the basis of the allegations set forth in the amended complaint and the evidence adduced, there is a violation or reason to believe there is a violation of subsection (a) of this section in the unauthorized importation of certain luggage products into the United States, or in their sale, by reason of such luggage products allegedly being covered by the claim of U.S. Letters Patent Des. 242,181, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's institution of the investigation was published in the FEDERAL REGISTER of November 30, 1977 (42 FR 60962).

On March 24, 1978, the presiding officer filed his recommended determination that there is reason to believe there is a violation of section 337 of the Tariff Act of 1930, as amended, in the unauthorized importation or sale in the United States of certain luggage products by reason of the fact that these luggage products infringe U.S. Letters Patent Des. 242,181, with the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The presiding officer certified the evidentiary record to the Commission for its consideration.

The Commission held a public hearing on May 5, 1978, for the purpose of hearing oral argument with respect to the recommended determination of the presiding officer concerning whether there is reason to believe there is violation of section 337, and oral presentations concerning whether any action (exclusion of articles from entry except under bond or a cease and desist order) should be issued, the form in which such action should be ordered, the amount and type of bond required, and the public interest factors.

DETERMINATION AND ACTION

After considering the record in this matter, including the record developed before the presiding officer, the presiding officer's recommended determination, and the exceptions and alternative findings of fact and conclusions of law thereto, the record developed before the Commission at its hearing May 5, 1978, and the written submissions filed by the complainant, the respondent Taiwan manufacturers, and the Commission investigative attorney on May 22, 1978, and the Federal Trade Commission on May 26, 1978, the Commission on June 15, 1978, unanimously determined that there is reason to believe that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unauthorized importation or sale of certain luggage products covered by the claim of U.S. Letters Patent Des. 242,181, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notwithstanding this determination, the Commission has decided to deny complainant's request for temporary relief.[1] The reasons for this action are set forth in the attached opinions of Commissioners.

OPINIONS

VIEWS OF CHAIRMAN JOSEPH O. PARKER AND COMMISSIONER GEORGE MOORE

This case comes to the Commission for decision by reason of complainant's request for a temporary exclusion order against the importation of certain luggage products allegedly covered by the claim of U.S. Letter Patent Des. 242,181.

On March 24, 1978, the presiding officer recommended that there was reason to believe there was a violation of section 337 of the Tariff Act of 1930, as amended. Oral argument was heard by the Commission on this matter on May 5, 1978, and briefs were

[1] Commissioners Ablondi and Minchew determined that a temporary cease and desist order should be issued.

submitted by the parties, including the Commission's investigative staff.

We agree with the reasons outlined by the presiding officer in his recommended determination.

However, in our opinion, the complainant has failed to show an immediate or pressing need to exclude certain luggage products from importation which allegedly violate section 337(a) of the Tariff Act of 1930, as amended.[2]

VIEWS OF COMMISSIONERS ALBERGER AND BEDELL

I. INTRODUCTION

This investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), was commenced by the Commission on November 30, 1977.[3] The complaint was filed by Airways Luggage Products (hereinafter referred to as "complainant") and named as respondents various manufacturers and importers of soft-sided luggage. The notice of investigation provided that an investigation be instituted pursuant to subsection (b) of section 337 on the question of whether there is a violation or reason to believe there is a violation of section 337(a) in the unauthorized importation of certain luggage products allegedly being covered by the claim of U.S. Letters Patent Des. 242,181, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated in the United States. Complainant requested temporary relief in the form of an exclusion order (TEO), in addition to its request for permanent relief.

On March 24, 1978, the presiding officer issued a recommended determination on the request for temporary relief. Subsequent to that, on May 5, 1978, the Commission held a hearing and received oral argument and oral presentations on this matter. Written submissions were received from parties of record and the Federal Trade Commission. On the basis of this record, having considered the testimony below and all submissions before the full Commission, we determine that complainant's request for a TEO should be denied.

II. STANDARD FOR GRANTING TEMPORARY RELIEF

Section 337(e) provides as follows:

* * * Exclusion of Articles From Entry During Investigation Except Under Bond—If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

A review of prior Commission practice [4] and analogous case law on various forms of temporary relief [5] persuade us that a TEO is an extraordinary measure and should only be issued under the most compelling of circumstances.

Several reasons can be cited to support this conclusion. The initial hearing for a TEO in a case under section 337 must be held within 3 months,[6] and an elaborate procedure for hearings, briefing and Commission action inevitably leads to a complication of the entire case at a very crucial juncture. In most cases this procedure interferes with discovery, and to avoid such interference the presiding officer may be compelled to cut short the discovery schedule. In addition to interfering with discovery, TEO hearings burden both the investigative attorney and the presiding officer. In fact, they tax the resources of the entire agency by requiring additional staff time, further hearings, and greater expense. The administrative burden is compounded when it comes to enforcing the order, collecting a bond, and resolving the question of forfeiture in the event final relief is awarded. Finally, the existing time limits covering the completion of our investigations [7] obviate the need for temporary relief in all but the most egregious cases. A Commission ruling on whether to grant a TEO is usually not made until the sixth or seventh month of an investigation,[8] and yet a final determination is usually made within a year. Hence the time span covered by a TEO would not be such as to justify the expense and delay unless the situation complainant faced was extremely grave.

Considering the above arguments, it is clear that complainants should not request temporary relief as a customary practice. Instead, there should be well defined circumstances under which such relief may be had. We shall therefore consider the language and purpose of section 337(e) in an attempt to define those circumstances.

Section 337(e) places three conditions precedent on the issuance of a TEO. First, the Commission must find a "reason to believe there is a violation" of section 337.[9] If such reason to believe is found, the Commission is instructed that it "may" grant such relief.[10] The use of the word "may" in subsection (e) is in stark contrast to the language of subsection (d), which says that in final determinations, if the Commission has found a violation, it "shall" grant relife.[11] It is our view that this discretion in the statute allows the Commission to formulate equitable standards for temporary relief based upon the interests of all parties.

The third and final condition exists by virtue of the requirement that we consider the effect of exclusion " * * * upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers * * *." On consideration of such factors we might decide to deny relief even where it would otherwise be justified.

Since the passage of the Trade Act of 1974,[12] the Commission has decided the question of temporary relief on only one occasion.[13] In that case the above three conditions were clearly articulated.[14] Prior to the 1974 amendments a similar test was applied.[15] We see no reason to reverse established precedent. The factual record of the present case indicates that while the reason to believe standard is met, complainant has not made a strong showing for extraordinary and immediate relief.

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[2] See *Chicory Root, Crude and Prepared*, Investigation 337-TA-27, Memorandum Opinion, Concurring Opinion of Commissioner Joseph O. Parker, that it must be shown "that complainant will suffer immediate and substantial harm if temporary relief is not granted.

[3] See 42 FR 60962 (Nov. 30, 1977).

[4] See *Chicory Root, Crude and Prepared*, 337-TA-27, Commission Memorandum Opinion, Oct. 1, 1976; *Convertible Game Tables and Components Thereof*, T.C. Pub 652 (March 1974); *Lightweight Luggage*, T.C. Pub 391 (April 1971).

[5] See e.g. *Metropolitan Area Transit Commission* v. *Holiday Tours*, 559 F. 2d 841 (1977); *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (1958).

[6] 19 CFR 210.41(e)(2).

[7] 19 U.S.C. 1337(b).

[8] In the present case the Commission did not ultimately vote on the question of temporary relief until about half the statutory period had expired.

[9] 19 U.S.C. 1337(e).

[10] Id.

[11] 19 U.S.C. 1337(d) states in part: "If the Commission determines * * * that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States * * *".

[12] Pub. L. 93-618.

[13] *Chicory Root, Crude and Prepared*, 337-TA-27, Commission Memorandum Opinion, Oct. 1, 1976

[14] Id., at 4.

[15] *Convertible Game Tables and Components Thereof*, T.C. Pub. 652 (March 1974); *Meprobamate*, T.C. Pub. 389 (April 1971).

III. REASON TO BELIEVE THERE IS VIOLATION

We concur with the presiding officer's ruling that there is a reason to believe the patent in question, U.S. Letters Patent Des. 242,181 ("181 patent" or "Davis design") is valid and infringed. We also agree that there is reason to believe such acts have a tendency to substantially injure the domestic industry involved with the manufacture of the patented article.

It is still the view of this Commission that the "reason to believe" standard requires the complainants to demonstrate a probability of a violation, or, alternatively stated, to show violation by a preponderance of the evidence.[16] But the legislative history of the 1974 Trade Act clearly indicates that the evidentiary standard for establishing a reason to believe is necessarily less than for a finding of violation:

> Section 337(e) of the act, as amended, by the Committee, provides that when the Commission has reason to believe during the course of an investigation under section 337, that an article is offered or sought to be offered for entry into the United States in violation of section 337, but the Commission does not have sufficient information to establish to its satisfaction that the section is being violated, then the Commission can direct that the article be excluded from entry until the Commission has completed such investigation as it deems necessary to resolve the matter. The exclusion of the articles involved would become effective upon notification by the Commission of the Secretary of the Treasury of its action directing exclusion.[17]

Thus while we must weigh the evidence to determine whether there is a preponderance of the evidence in support of the allegations, it cannot be expected that a complete and conclusive evidentiary record exists on all issues at this time. Hence our rulings on reason to believe there is a violation pertain only to the question of temporary relief. We do not express any views on questions of violation, which will be resolved by the final determination in this proceeding.

(A) Reason to Believe the Patent Is Valid

The presiding officer found a reason to believe that the 181 patent is valid and enforceable.[18] He found that the design was both novel and original,[19] despite prior art not cited by the patent examiner.[20] He found the pillar design of the 181 patent to be distinctive, different, and elegant.[21] He also found it to be nonobvious to one of ordinary skill in the art.[22]

In their brief, and in oral argument before the full Commission, respondents raised a basic question about the standard of proof the presiding officer applied. They contend that temporary relief should not be granted unless the patent is "unquestionably valid".[23] We cannot agree with this argument. To adopt such a standard would be to ignore the clear statutory language of section 337(e) and the legislative history which underlies it.[24] Instead, we feel that the presumption of validity still applies, and that evidence presented by complainant's witnesses upholds that presumption.[25]

Respondent also raised prior art not cited by the patent examiner, and maintained that such prior art vitiated the presumption of validity.[26] We do not agree that this prior art, the so-called "Hoosier design", was any more relevant than the designs before the patent examiner.[27] Consequently, the existence of the "Hoosier design" does not weaken the statutory presumption of validity. The different pillar design of the Davis design, coupled with its raised center design and distinctive stitching, makes it both novel and original.[28] While these elements existed separately in the prior art (including the "Hoosier design"), their accumulation into one design was patentably unique.[29]

(B) The Patent Is Infringed

The test for infringement asks whether the ordinary observer, giving such attention as a purchaser normally gives, would believe that the designs are substantially the same.[30] The record shows ample support for the presiding officer's finding that the designs were substantially similar, and that actual confusion existed in the market place.[31] This evidence clearly establishes a reason to believe that the 181 patent has been infringed by those respondents named in the recommended determination.[32]

(C) Injury to the Domestic Industry

The presiding officer cited three relevant factors for analyzing injury to a domestic industry: (1) the amount of sales of the infringing imported articles, (2) the ratio of imports to the domestic, patented article, and (3) the capacity for importation of the infringing article.[33] In applying these factors he noted a very substantial unit ratio of wholesale sales of imported infringing luggage to those of complainant's.[34]

Other economic data appears important to us. Capacity utilization is declining; inventory is high and the profit to sales ratio is below 5 percent.[35] The presiding officer found these indicia of low profitability to be causally related to the increased ratio of infringing imports.[36] There is a basis in the record for establishing this causal relationship.[37] There were also a number of findings, supported by evidence, which showed that sales of the patented domestic article were lost to infringing imports.[38]

We conclude from the above findings that there is reason to believe the alleged unfair acts have a tendency to substantially injure the domestic industry. Our ruling does not rely on the proposition, alluded to by the presiding officer, that in patent cases the injury requirement of section 337 is satisfied by a showing of *any* lost sales to the infringing article.[39] Such a rule would lead to absurd results, and would obviate the need for our traditional analysis into such questions as profitability, ratio of imports to domestic consumption, and volume of lost sales. We consider these factors equally relevant in the patent area. Even in making a showing of tendency, complainants must prove that the tendency is toward *substantial* injury.[40] In the present case, the economic data reviewed above supports such a result.

Having considered the facts of this case, the submissions and oral argu-

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[16] See *Chicory Root, Crude and Prepared*, 337-TA-27, Commission Memorandum Opinion, Oct. 1, 1976, at p. 8.

[17] U.S. Senate, report of the Committee on Finance to accompany H.R. 10710, Trade Act of 1974, S. Rept. 93-1298 (93d Cong., 2d sess.) 1974, at pp. 197-98.

[18] Recommended determination, findings of fact 23-46; Conclusions of Law 5.

[19] See id., at pp. 36-40.

[20] Id., at pp. 38-39. The prior art to which he referred was the "Hoosier design," described and illustrated at pp. 19-20 of the Recommended Determination, Findings of Fact 36, 37.

[21] Id., Finding of Fact 39.

[22] Id., at pp. 38-39.

[23] Respondents brief at p. 5.

[24] See supra footnote 1, p. 6 and accompanying text.

[25] See Recommended Determination at pp. 36-37.

[26] Official Report of Proceedings Before the USITC in Investigation 337-TA-39 (May 5, 1978) at p. 32.

[27] See Recommended Determination, Findings of Fact 26-34, wherein the presiding officer reviews the prior art.

[28] Id., at 37-40; Findings of Fact 1, 26, 39; See also, brief of Commission investigative attorney at pp. 8-12.

[29] Recommended Determination, Finding of Fact 44.

[30] *Gorham Co.* v. *White*, 81 U.S. 511 (1871).

[31] Recommended Determination at pp. 22-24, 40-43.

[32] Id., Findings of Fact 12, 13, 15, 16. The presiding officer recommended dismissal of some of these parties on the basis of assurances they would discontinue violations. The Commission issued an order to that effect on May 23, 1978.

[33] Recommended Determination at p. 45.

[34] Id., at p. 46.

[35] Id., Findings of Fact 82, 86, 88, 96, 106.

[36] Id., at 46-47.

[37] Id., Findings of Fact 54, 55, and 56.

[38] Id., Findings of Fact 54, 83, 94-95, 98, and 100.

[39] Id., at p. 46, Finding of Fact 90. See also, Complainant's brief at p. 24.

[40] 19 U.S.C. 337(a) states in part: "* * * Unfair acts * * * the effect or tendency of which is to * * * destroy or substantially injure an industry. * * *."

ments of both parties, and the findings and conclusions of the presiding officer, we hereby adopt such findings and conclusions to the extent they are not inconsistent with this opinion, and we therefore reject all exceptions.

IV. EXERCISE OF DISCRETION IN GRANTING TEMPORARY RELIEF

Previous Commission opinions have emphasized the need for a showing of "immediate and substantial harm" for the issuance of a TEO.[41] In one such decision a unanimous Commission stated that "* * * the immediate and substantial harm standard is more stringent than the injury standard set forth in the statute, which requires only '* * * the * * * tendency * * * to * * * substantially injure.' "[42]

More recently, in a concurring opinion, Commissioner Parker described the standard:

> In order to obtain temporary relief in advance of the final decision in an investigation under section 337, it must be shown, among other things, that complainant will suffer immediate and substantial harm if temporary relief is not granted. * * * There has been no showing that there will be any abrupt change which will materially worsen the position of complainant if it is required to wait for the completion of this investigation before relief, if any, is granted.[43]

We believe it is relevant to raise questions as to the immediacy and gravity of the possible harm. Moreover, such a test is not unlike that applied by courts in awarding preliminary injunctive relief. In such instances, the courts consider a number of factors, all designed to resolve questions as to the fairness of relief to all parties, the possibility of alternatives, and the public interest. In *Virginia Petroleum Jobbers Association* v. *F.P.C.*[44], for example, the court was influenced by four factors: (1) The likelihood of success on the merits; (2) the certainty of irreparable injury: (3) the likelihood of harm to other parties of interest if relief is granted; and (4) the public interest.[45]

While this elaborate judicial reasoning may appear somewhat cumbersome, it is important to balance equities in any decision that involves discretionary relief. The Commission has historically shown concern that many of the above factors be considered before a TEO is issued. The first factor would lead to redundancy if we considered it here, for we have found a reason to believe there is a violation. Moreover, the fourth factor encompasses the kind of public interest considerations the Commission is bound under subsection 337(e) to apply. However, before granting temporary relief we would ordinarily consider the two aspects of the court's rationale not specifically raised by the language of section 337(e): first, will substantial injury occur before the Commission is able to act on the request for permanent relief? Second, would a TEO have a serious adverse effect on respondents?

In the present case, we conclude that one factor outweighs all others. Complainant has not demonstrated that immediate and substantial harm will occur prior to the Commission's determination on the question of final relief. In fact, the evidence shows that imports of articles alleged to infringe complainants' patent have ceased altogether.[46] Thus the unfair acts we have found a reason to believe exist have, at least temporarily, ceased.[47]

It is conceivable that respondents might resume their importation at any time, but even if they did complainant must demonstrate more than a theoretical possibility of harm. There must be some evidence that immediate harm will in fact occur, and that such harm would be of a substantial nature. This places an extremely heavy burden on complainants, but such a burden is altogether proper when a party seeks extraordinary relief. Unless drastic conditions are demonstrated the Commission should not award temporary relief simply because complainants *might* ultimately prevail on the question of permanent relief.

The failure of complainant to demonstrate a risk of immediate and substantial injury is the preeminent fact in this case. We see no need to weigh the question of possible harm to other persons from extraordinary relief, as that would only be an important consideration if complainant had shown a risk of immediate and substantial harm.

Finally, we note that the Commission has not made a finding with respect to the public interest factors mentioned in section 337(e).[48] We need only consider these issues if, on the grounds stated above, we determine that temporary relief is appropriate. Our decision here does not involve such a determination.

DISSENTING VIEWS OF COMMISSIONER MINCHEW[49]

I concur with the Commission majority and the presiding officer that there is reason to believe there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) in the unauthorized importation or sale of certain luggage products which infringe U.S. Letters Patent Des. 242, 181, with the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated in the United States. However, I disagree with the Commission majority that temporary relief should not be granted at this time.

It is difficult to justify finding there is reason to believe that a violation exists and yet finding that the violation should not be remedied by temporary relief. Complainants under section 337 are already subject to discretionary withholding of relief by the Commission under the public interest provisions of subsections (e) and (f) and by the President under subsection (g). There is no reason to introduce still another barrier to relief. The public interest factors, which the Commission is required to consider, i.e. the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the

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[41] See cases cited, ftn. 1, p. 2. Prior to the Trade Act of 1974, the Commission did not have the power to issue temporary exclusion orders, and instead merely recommended such relief to the President. Nevertheless, the President only awarded temporary relief on recommendation from the Commission, and the Commission only recommended such measures after a showing of immediate and substantial harm. See 19 U.S.C. § 1337(f) (1965 ed.)

[42] *Meprobamate*, T.C. Pub. 389, p. 6 (April 1971).

[43] *Chicory Root*, 337-TA-27, Concurring Opinion of Commissioner Joseph O. Parker, Oct. 1, 1976.

[44] 259 F.2d 921 (1958).

[45] Id. at 925. Respondents and the Federal Trade Commission (FTC) have both raised the argument that in patent cases injunctions are seldom granted. In these cases plaintiffs must show that the patent is beyond question valid and infringed. See Respondent Taiwan Manufacturers brief at p. 5; letter from Federal Trade Commission, filed May 26, 1978 at p. 5. We cannot accept their contention, see p. 5, supra. The best articulation of the reason for such a standard is in *Carter-Wallace, Inc.* v. *Davis-Edwards Pharmaceutical Corp.* 443 F.2d 867, 871, (2d Cir. 1971), where the Court explained such a rule as: "[i]n apparent recognition of the potential unfairness of allowing one armed with letters patent obtained in an ex parte proceeding to prevent the conduct of business by others before he has submitted all fairly disputed issues of fact to a full adversary hearing and has won a favorable decision by some court * * *"

But in this case discovery was had and the question of "reason to believe" was submitted to a full adversary hearing. Moreover, to adopt such a standard would overlook the clear lanaguage of section 337(e) which only requires a reason to believe rather than an unquestionable violation.

[46] Recommended Determination, Findings of Fact 111 and 112.

[47] In *Chicory Root*, supra p. 2 at 11 the Commission emphasized the importance of a cessation of imports: "The fact that an alleged unfair method or act has ceased is not in and of itself dispositive of the issue of whether there is reason to believe that there is a violation of section 337. The fact that the unfair method or act has ceased is relevant to the question of whether there is need for temporary relief."

[48] See supra, pp. 1, 4.

[49] Commissioner Ablondi concurs with Commissioner Minchew that a cease and desist order should be issued.

United States, and United States consumers, will not be adversely affected by the granting of temporary relief. It is my view that a cease and desist order preventing every respondent from importing luggage which infringes U.S. Letters Patent Des. 242,181, except under license, during the course of this investigation would be appropriate.

I agree with the views expressed by Vice Chairman Alberger and Commissioner Bedell with respect to reason to believe there is a violation of the statute, and this opinion will be directed to the question of why a cease and desist order would provide appropriate temporary relief in this situation.

Subsection (f) of section 337 provides as follows:

> Cease and Desist Orders.—In lieu of taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believe to be violating this section, as the case may be, an order directing such person to cease and desist for engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

Because the record is devoid of any evidence showing that complainant will be injured by imports of infringing luggage before this investigation is completed,[50] I believe it would be inappropriate to issue a temporary exclusion order. However, a cease and desist order would avoid unduly burdening import trade until this case is completed, while still preventing complainant from being injured in the event that any named respondent decides to import infringing luggage. In addition, some of the named respondents have failed to respond to the complaint or to furnish discovery and these respondents, who may be importing infringing luggage, also will be prevented from importing infringing luggage until the completion of our investigation.

There is need for temporary relief because complainant is faced with numerous actual and potential foreign manufacturers and exporters located in Korea and Taiwan that have the capacity to manufacture, export and sell in the United States large quantities of infringing imports. Because the record fails to show direct evidence of importations of infringing luggage since October of 1977, I believe the appropriate remedy is a cease and desist order.

By order of the Commission.

Issued: August 4, 1978.

KENNETH MASON,
Secretary.

[FR Doc. 78-22251 Filed 8-8-78; 8:45 am]

[50] The presiding officer's finding of fact 111 in his recommended determination filed Mar. 24, 1978, states in part: "no direct evidence exists that any infringing luggage has been caused to be imported into the United States subsequent to or somewhat prior to Oct. 28, 1977."

[4410-09]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

McNEILAB, INC.

Importation and Manufacture of Controlled Substances; Objections, Requests for Hearing, and Hearing

On June 27, 1978, at 43 FR 27908-09, notice was given that McNeilab, Inc., Camp Hill Road, Fort Washington, Pa. 19034, had made application to the Drug Enforcement Administration to be registered as an importer of the following basic class controlled substances: Imported raw opium, poppy straw, and concentrate of poppy straw, all listed in Schedule II of the Controlled Substances Act of 1970; and that McNeilab, Inc., had also made application for registration as a bulk manufacturer of the following basic class controlled substances: Opium extracts, opium fluid extracts, powdered opium, granulated opium, tincture of opium, morphine, codeine, thebaine, oxycodone, and concentrate of poppy straw; and opportunity was given for the filing of comments and objections to said applications and for the filing of requests for hearing with respect to them.

Requests for hearing have been filed by Mallinckrodt, Inc., and by Penick Corp. with respect to both applications. Both Mallinckrodt and Penick assert that the registration of McNeilab, Inc., as an importer and as a bulk manufacturer, as applied for, is not consistent with the public interest as defined in the Controlled Substances Act and applicable regulations, and with U.S. international obligations.

Merck & Co., Inc., submitted comments indicating that, in its view, there is presently an adequate supply and adequate competition with respect to the contolled substances which are the subject of the applications filed by McNeilab and that, consequently, those applications do not meet the criteria for registration under section 303(a) of the Controlled Substances Act. In addition, Merck asserts that McNeilab seems to lack the technical competence and experience necessary to engage in the bulk manufacture of controlled substances. Merck also believes that the declaration of an emergency provided for in the regulations refers to an emergency related only to the availability of substances and has nothing to do with the number of persons registered to import; and that section 303(a) of the Controlled Substances Act clearly shows that Congress intended that the same companies registered for bulk manufacturing a substance are to be the same companies registered for importing that controlled substance. Merck believes that any determinations made by the Drug Enforcement Administration with respect to the applications filed by McNeilab should be made in a forum where opposing views can also be expressed and weighed.

Accordingly, notice is hereby given pursuant to 21 CFR 1301.43 and 1311.42 that a hearing will be held on the aforesaid applications for registration commencing at 10 a.m. on Friday, September 15, 1978, in Room 1210, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C., the proceedings on that day to be limited to a preliminary discussion to identify proper parties and issues, and to determine procedures and set dates and locations for further proceedings. Any person entitled to participate in said hearing and desiring to do so should file a notice of appearance pursuant to 21 CFR 1301.54 and 1316.48 on or before September 8, 1978. A person who had filed a request for a hearing need not also file a notice of appearance.

Dated: August 3, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-22218 Filed 8-8-78; 8:45 am]

[4410-01]

[AAG/A Order No. 2-78]

PRIVACY ACT OF 1974

Notice of New Routine Use

Notice is hereby given that pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e) (4) and (11), the Department of Justice, U.S. Parole Commission, proposes to add the routine use printed below to the JUSTICE/PRC-003, Inmate and Supervision Files system, notice of which was published in the FEDERAL REGISTER on Thursday, July 13, 1978 (43 FR 30140).

* * * * *

(j) A record from this system may be disclosed to a person or to persons who may be exposed to harm through contact with a particular parolee or mandatory releasee if it is deemed by a Commissioner to be reasonably neces-

sary to give notice that such danger exists.

* * * * *

The Department of Justice is adding the new routine use language to allow disclosure by a Commission of the U.S. Parole Commission to member of the public, who may be exposed to harm through contact with a particular parolee or mandatory releasee, of information reasonably necessary to give notice that such danger exists.

Since this routine use is compatible with the purposes for which the system is maintained, no report to the Office of Management and Budget is required.

Inquiries or comments may be submitted in writing to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, Washington, D.C. 20530. All comments must be received on or before September 8, 1978. If no comments are received within 30 days (September 8, 1978), the new routine use will be adopted as set forth. No oral hearings are contemplated. The amended system is reprinted below in its entirety.

Dated: August 1, 1978.

KEVIN D. ROONEY,
Assistant Attorney General for Administration.

JUSTICE/PRC-003

System Name:

Inmate and Supervision Files.

System location:

Records are maintained at each of the Commission's Regional Offices for inmates incarcerated in and persons under suprvision in each region. Records are housed temporarily at the Commission's Headquarters Office located at 320 First Street, Washington, D.C. 20537 when used by the National Appeals Board or other Headquarter's personnel. Prior to the first parole hearing, the inmate's file is maintained at the institution at which he is incarerated. All requests for records should be made to the appropriate regional office at the following addresses: U.S. Parole Commission; Scott Plaza II; Industrial Highway, Sixth Floor; Philadelphia, Pa. 19113. U.S. Parole Commission; 3500 Greenbriar Parkway, Building 0300; Atlanta, Ga. 30331. U.S. Parole Commission; KCI Bank Building, 8800 112th Street NW., Kansas City, Mo. 64153. U.S. Parole Commission; 3883 Turtle Creek Boulevard, Suite I; Dallas, Tex. 75219. U.S. Parole Commission; 330 Primrose Drive, Fifth Floor; Burlingame, Calif. 94010.

Categories of individuals covered by the system:

Current and former inmates under the custody of the Attorney General. Former inmates include those presently under supervision as parolees or mandatory releasees.

Categories of records in the system:

1. Computation of sentence and supportive documentation.
2. Correspondence concerning pending charges, and wanted status, including warrants.
3. Requests from other Federal and non-Federal law enforcement agencies for notification prior to release.
4. Records of the allowance, forfeiture, withholding and restoration of good time.
5. Information concerning present offense, prior criminal background, sentence, and parole from the U.S. Attorneys, the Federal Courts, and Federal prosecuting agencies.
6. Identification Data, physical description, photograph and fingerprints.
7. Order of designation of institution of original commitment.
8. Records and reports of work and housing assignments.
9. Program selection, assignment and performance adjustment/progress reports.
10. Conduct records.
11. Social background.
12. Educational data.
13. Physical and mental health data.
14. Parole Commission applications, appeal documentation, orders actions, examiner's summaries, transcripts or tapes of hearings, guideline evaluation documents, parole or mandatory release certificates, statements of third parties for or against parole, special reports on youthful offenders and adults required by statute and related documents.
15. Correspondence regarding release planning, adjustment and violations.
16. Transfer orders.
17. Mail and visit records.
18. Personal property records.
19. Safety reports and rules.
20. Release processing forms and certificates.
21. Interview request forms from inmates.
22. General correspondence.
23. Copies of inmate court petitions and other court documents.
24. Reports of probation officers, Commission correspondence with former inmates and others, and Commission orders and memoranda dealing with supervision and conditions of parole or mandatory release.
25. If an alleged parole violation exists, correspondence requesting a revocation warrant, warrant application, warrant, instructions as to service, detainers and related documents.

Authority for maintenance of the system:

18 U.S.C. 4201-4218, 5005-5041, 28 CFR part O, Subpart V, and 28 CFR part 2.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(a) The file is the "working tool" used by Parole Commission examiners to frame the questions at the inmates initial hearing. After that hearing, it is placed in the appropriate regional office where it provides the principle information source for decisions necessary during the pre-release stage (before parole), the review hearing or record review, and the post release stage (when supervision takes place). It is sent temporarily to Commission Headquarters when appeals come before the National Appeals Board or when needed by counsel and others on the Headquarters Staff. It is used by employees at all levels including Commission members to provide the information for decision making in every area of Commission responsibility. Files of released inmates are used to make statistical studies of subjects related to parole and revocation.

(b) The system is used to provide information source to officers and employees of the Department of Justice who have a need for the information in the performance of their duties.

(c) The system is used to provide information source for disclosure of information that are matters solely of general public record, such as offense, sentence data, release date, etc. Names are not disclosed when information is so provided.

(d) The system is used to provide informational source for responding to inquiries from Federal inmates involved, their families or representatives, or Congressional inquiries.

(e) Internal Users—Employees of the Department of Justice who have a need to know information in the performance of their duties.

(f) External Users—U.S. Probation Officers, who supervise parolees and mandatory releasees, and U.S. District Court judges on rare occasions when Commission action is attacked in litigation. Very rarely, to enforcement authorities outside of the Department of Justice.

(g) In the event that material in this system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, State, local

or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

(h) A record from this system may be disclosed to a Federal, State or local agency maintaining civil, criminal or other relevant information if necessary to obtain information relevant to an agency decision relating to current or former inmates under supervision.

(i) A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(j) A record from this system may be disclosed to a person or to persons who may be exposed to harm through contact with a particular parolee or mandatory releasee if it is deemed by a Commissioner to be reasonably necessary to give notice that such danger exists.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the U.S. Parole Commission unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the U.S. Parole Commission, not otherwise required to be released pursuant to 5 USC 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and in response to a communication from the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 USC 2904 and 2906.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information maintained in the system is stored on papers fastened into file jackets and a minimal amount is on cards stored in card file drawers. Active files and card indices are loctaed in each region; inactive files are at the Washington Federal Records Center and the card index to inactive files is at Board Headquarters in Washington. An experimental program to store such data on tape, disk or microfiche using ADP technology is in the beginning stages.

Retrievability:

All data is indexed by name and/or register number. When ADP technology is used in the future, such data may be available by Social Security Number, FBI identification number, or other indices.

Safeguards:

Within the Department of Justice, routine use is made available to employees only on a "need to know" basis. Files are stored in rooms which are supervised by day and locked at night. Data from files for recipients outside of the Parole Commission and Bureau of Prisons is conveyed by letter so that a record exists. When files are sent they are covered by a letter with a follow-up on return of the file. Such disclosure is infrequent, and is within the Federal enforcement-prosecution-judicial area only.

Retention and disposal:

Records in this system are retained for a period of ten (10) years after expiration of sentence, then destroyed by electronic means or shredding.

System manager(s) and address:

Herman Levy, Attorney-Management Analyst, United States Parole Commission, 320 First Street NW., Room 342, Washington, D.C. 20537.

Notification procedure:

Address inquiries to Regional Director at appropriate location. For general inquiries, address System Manager. The Attorney General has exempted this system from compliance with the provisions of Subsection (d) under the provisions of Subsection (j).

Records source categories:

1. Individual inmate; 2. Federal law enforcement agencies and personnel; 3. State and Federal probation services; 4. Non-Federal law enforcement agencies; 5. Educational institutions; 6. Hospital or medical sources; 7. Relatives, friends and other interested individuals or groups in the community; 8. Former or future employers; 9. Evaluations, observations, reports, and findings of institution supervisors, counselors, board and committees, Parole Commission examiners, Parole Commission Members; 10. Federal Court records; 11. U.S. Bureau of Prisons personnel and records.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 55a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the FEDERAL REGISTER

[FR Doc. 78-22179 Filed 8-8-78; 8:45 am]

[4410-10]

Immigration and Naturalization Service

ALIEN GRADUATES OF MEDICAL SCHOOLS

Notice Regarding Permission To Remain in the United States and Accept or Continue Employment Pending Results of the Visa Qualifying Examination (VQE) To Be Given in September 1978

Any alien graduate of a medical school who was admitted to the United States as a nonimmigrant to perform services as a member of the medical profession or to receive graduate medical education or training, or whose nonimmigrant status was changed for that purpose, and who establishes that his/her application to take the visa qualifying examination in September 1978 has been accepted, may be permitted to remain in the United States through December 1978 to take that examination and to await its results and to accept or continue employment during that period.

Dated: August 3, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-22151 Filed 8-8-78; 8:45 am]

[6820-31]

MARINE MAMMAL COMMISSION

MARINE MAMMAL COMMISSION AND COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

Meetings

Notice is hereby given that the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will meet on September 7, 8, and 9, 1978, at the Reef Hotel 2169 Kalia Road, Honolulu, Hawaii 96815.

The Commission and Committee will meet together in public session from 11 a.m. to 5 p.m. on September 7, and from 9 a.m. to 5 p.m. on September 8, to discuss and consider the status of activities and problems affecting marine mammals, including matters relating to:

(1) The Recent meeting of the International Whaling Commission and the recent

meeting on renegotiation of the International Convention for the Regulation of Whaling;

(2) Research needs and priorities relating to the activities of the International Whaling Commission;

(3) Bowhead whale research and management activities and plans;

(4) Florida manatee research and protection activities and plans;

(5) Cooperative research and protection with Mexico;

(6) National Marine Fisheries Service cetacean research;

(7) Hawaiian humpback whale research and protection;

(8) Hawaiian monk seal research and protection;

(9) The application of the State of Alaska to waive the moratorium and resume management of marine mammals;

(10) Standards and guidelines for marine mammal maintenance; and

(11) Such other matters as may appropriately come before the meeting.

These sessions will be open to the public, and seating will be available to accommodate those who are interested in attending.

The remainder of the meeting will consist of executive sessions of the Commission and Committee. These sessions will be devoted to the exchange of opinions and deliberations concerning internal personnel rules and practices, budget, interagency liaison, proposed agency policies and actions, and the evaluation of proposals to conduct research related to marine mammal protection and conservation. Participants will be candidly discussing and appraising the professional qualilfications and competence of the proposers, their potential contribution to the research program, and information given to the Commission and Committee in confidence.

Executive sessions will be held on September 7, from 9 a.m. to 10:40 a.m. and on September 9, from 9 a.m. to 5 p.m. These sessions are concerned with matters listed in 5 U.S.C. Sec. 552b(c) (2), (3), (4), (6), and (9)(B), and therefore will not be open to the public.

Dated: August 3, 1978.

JOHN R. TWISS, Jr.,
Executive Director,
Marine Mammal Commission.

[FR Doc. 78-22153 Filed 8-8-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

FLORIDA POWER & LIGHT CO.

Proposed Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-31 and DPR-41 issued to Florida Power & Light Co. (the licensee), for operation of the Turkey Point Station Unit Nos. 3 and 4, located in Dade County, Fla.

In accordance with the licensee's application for amendments dated May 8, 1978, supplemented on July 10, 1978, the amendments would revise the provisions in the Technical Specifications for Units 3 and 4 relating to the transient and accident analysis to account for the increase in steam generator tube plugging levels from the current 19 percent to 25 percent. Additionally, the licensee's July 19, 1977 notification of the Unit 4, cycle 5 reload involves a reevaluation of the ECCS using a corrected approved ECCS model.

Prior to issuance of the proposed license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the act), and the Commission's rules and regulations.

By September 8, 1978, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendments to the subject facility operating licenses. Petitions for leave to intervene must be filed in accordance with the provisions of this FEDERAL REGISTER and § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Robert Lowenstein, Esq., Lowenstein, Newman, Reis & Axelrad, 1025 Connecticut Avenue NW., Suite 1214, Washington, D.C. 20036, the attorney for the licensee.

Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to 10 CFR 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated May 8, 1978, supplemented on July 10, 1978 and the June 19, 1978 reload submittal which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199.

Dated at Bethesda, Md., this 4th day of August 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-22309 Filed 8-8-78; 8:45 am]

[7590-01]

[Docket Nos. 50-387 and 50-388]

PENNSYLVANIA POWER & LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE, INC., SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2

Receipt of Application for Facility Operating Licenses; Availability of Applicant's Environmental Report; and Consideration of Issuance of Facility Operating Licenses Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application for a facility operating license from Pennsylvania Power & Light Co. and Allegheny Electric Cooperative, Inc. (the Applicants) to possess, use, and operate the Susquehanna Steam Electric Station, Unit 1 and 2, two boiling water nuclear reactors (the facilities), located on a site in Salem Township, Luzerne County, Pa. The reactors are designed to operate at a

steady-state power level of 3293 megawatts thermal.

The applicants have also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, an environmental report. The report, which discusses environmental considerations related to the proposed operation of the facilities is being made available at the Pennsylvania State Clearinghouse, Governor's Budget Office, Intergovernmental Relations Division, P.O. Box 1323, Harrisburg, Pa. 17120 and at the Economic Development Council of Northeast Pennsylvania, P.O. Box 777, Avoca, Pa. 18641.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, 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. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on any matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permit. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

The Commission will consider the issuance of facility operating licenses to Pennsylvania Power & Light Co. and Allegheny Electric Cooperative, Inc. which would authorize the applicants to possess, use and operate the Susquehanna Steam Electric Station, Units 1 and 2, in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation on the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants' application for facility operating licenses by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facilities was authorized by construction permit Nos. CPPR-101 and CPPR-102, issued by the Commission on November 2, 1973. Construction of Unit 1 is anticipated to be completed by May 1, 1980, Unit 2 by November 1, 1981.

Prior to issuance of any operating licenses, the Commission will inspect the facilities to determine whether they have been constructed in accordance with the application, as amended, and the provisions of the construction permits. In addition, the licenses will not be issued until the Commision has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed licenses, and has concluded that the issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the licenses, the applicants will be required to execute an indemnity agreement as required by section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By September 8, 1978 the applicants may file a request for a hearing with respect to issuance of the facility operating licenses and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filled a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by September 8, 1978. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts, Trowbridge & Madden, 1800 M Street NW., Washington, D.C. 20036, attorney for the applicants. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a) (i)-(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating licenses dated April 10, 1978, and the applicants' environmental report dated July 12, 1978, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. As they become available, the following documents may be inspected at the above locations: The safety evaluation report prepared by

the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating licenses; (5) the proposed facility operating licenses; and (6) the technical specifications, which will be attached to the proposed facility operating licenses.

Copies of the proposed operating licenses and the ACRS report, when available, may be obtained by request to the Director, Division of Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161.

Dated at Bethesda, Md., this 2d day of August 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-22138 Filed 8-8-78; 8:45 am]

[7590-01]

[Docket Nos. 50-259, 50-260, and 50-296]

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 40 to facility operating license No. DPR-33, amendment No. 38 to facility operating license No. DPR-52 and amendment No. 14 to facility operating license No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised technical specifications for operation of the Browns Ferry Nuclear Plant, Units Nos. 1, 2, and 3, located in Limestone County, Ala. The amendments are effective as of the date of issuance.

The amendments change the technical specifications to lower the reactor low water level setpoint from 490 inches to 470 inches.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated February 24, 1977, as supplemented by letter dated May 23, 1978, (2) amendment No. 40 to license No. DPR-33, amendment No. 38 to license No. DPR-52, and amendment No. 14 to license No. DPR-68, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Ala. 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 2d day of August 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-22140 Filed 8-8-78; 8:45 am]

[7590-01]

[Docket No. 50-344SP]

PORTLAND GENERAL ELECTRIC CO. ET AL., (TROJAN NUCLEAR PLANT)

Amended Notice of Place of Special Prehearing Conference on August 14, 1978

AUGUST 7, 1978.

By a previous notice of special prehearing conference set for August 14, 1978, the place of conference was noticed for courtroom No. 362, Multnomah County Courthouse, Portland, Oreg.

Due to unavailability of that courtroom, the special prehearing conference will be heod instead at 9 a.m., local time, in the east courtroom, 6th floor, U.S. District Court, 620 Southwest Main Street, Portland, Oreg., on August 14, 1978.

It is so ordered.

Dated at Bethesda, Md., this 7th day of August 1978.

For the Atomic Safety and Licensing Board established to rule on petitions and/or requests for intervention.

MARSHALL E. MILLER,
Chairman.

[FR Doc. 78-22400 Filed 8-8-78; 9:43 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SCIENCE, TECHNOLOGY, AND DEVELOPMENT ADVISORY COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Science, Technology, and Development Advisory Committee.
Date: September 7th and 8th, 1978.
Time: 9 a.m. to 5 p.m.
Place: Room 2008, New Executive Office Building, Washington, D.C. 20500.
Type of meeting: Open.
Contact persons: Mr. William Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, telephone 202-395-4692.
Summary minutes: May be obtained from the Office of Science and Technology Policy, Washington, D.C. 20500.
Purpose of advisory group: In March 1978, the President decided to create a Foundation for International Technological Cooperation in the reorganized foreign aid structure. To develop detailed plans for the Foundation, a Planning Office has been established reporting to Governor Gilligan, Chairman of the Development Coordination Committee. OSTP has been instrumental in developing the concept of the Foundation and the Planning Office; the Advisory Committee being established will advise the Director of OSTP on the concept and early planning of the Foundation, as well as on related policy issues and programs of the U.S. Government.
Agenda: 9 a.m. to 5 p.m.—A discussion of the organization, functioning, and planning for future activities of the Advisory Committee.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc. 78-2250 Filed 8-8-78; 8:45 am]

[7910-01]

RENEGOTIATION BOARD

STANDARD FORM OF CONTRACTOR'S REPORT (RB FORM 1) AND APPLICATION FOR STANDARD COMMERCIAL ARTICLE EXEMPTION

Partial Fiscal Years, Extension of Time for Filing

Contractors with fiscal years ending after September 30, 1976 but before May 31, 1978 have until October 20,

1978 in which to file Standard Forms of Contractor's Report (RB Form 1) and Applications for Commercial Exemption (Board action July 7, 1978, 43 FR 30002, July 12, 1978). All reports and applications due to be filed by October 20, 1978 involve amounts received or accrued both before and after the present "termination date" for renegotiation coverage as provided in the Renegotiation Act of 1951, as amended, September 30, 1976. Accordingly, the Board felt that additional guidance would be of assistance to contractors and subcontractors in the preparation of reports and applications for the stub-year period.

RB FORM 1

Section 102(c) of the Renegotiation Act of 1951 (50 U.S.C. App. 1212(c)), which prescribes the present "termination date," provides that renegotiation shall apply only with respect to receipts or accruals under renegotiable contracts and subcontracts which are determined to be reasonably attributable to performance of such contracts and subcontracts on or prior to the "termination date" (Sept. 30, 1976), and to the related costs paid or incurred.

In the preparation of an RB Form 1 of a fiscal year which includes the September 30, 1976 "termination date," contractors should refer to § 1466.4 of the Board's regulations (32 CFR 1466.4). This regulation treats in detail the question of which receipts or accruals and costs paid or incurred are considered to be reasonably attributable to the performance of renegotiable contracts and subcontracts prior to the "termination date," under various methods of accounting.

Although only those receipts or accruals reasonably attributable to performance of renegotiable contracts or subcontracts on or prior to September 30, 1976 are subject to renegotiation, contractors except those who report on the completed contract method of accounting, should file their RB Form 1 for a full 12-month fiscal year and include total receipts or accruals and total costs or expenses, in order that the filing may be reconciled with the contractor's Federal income tax return.

Contractors should first divide their total business for the fiscal year between the receipts or accruals and cost or expenses reasonably attributable to the period from the beginning of the fiscal year to and including September 30, 1976 and those attributable to the period remaining in the fiscal year after September 30, 1976. Then, contractors should break out their renegotiable sales, i.e., segregate between renegotiable and nonrenegotiable, for the period from the beginning of the fiscal year to and including September 30, 1976. Costs and expenses should also be allocated to renegotiable and nonrenegotiable business, for the period from the beginning of the fiscal year to and including September 30, 1976. Contractors should report, as renegotiable, on the RB Form 1 only the receipts or accruals and costs paid and incurred which are reasonably attributable to the performance of renegotiable contracts and subcontracts on or prior to September 30, 1976, with the remainder of the full fiscal year's receipts or accruals and costs to be reported in the nonrenegotiable column.

Contractors who have the information readily available or who have already segregated receipts or accruals and allocated costs or expenses between renegotiable and nonrenegotiable business for the full fiscal year, as if renegotiable coverage was still in effect after September 30, 1976, are urged to file this information with the Board. Such information should enable the Board to verify the segregations and allocations made by the contractor for the pre-September 30, 1976 covered period, without the necessity of obtaining additional information. It would also avoid the necessity of refiling should renegotiation coverage be extended retroactively at a later date.

APPLICATIONS FOR COMMERCIAL EXEMPTION

In self applying the Commercial Exemption or in preparing and filing an Application for Commercial Exemption with respect to a fiscal year which includes the September 30, 1976 "termination date," contractors must first segregate their sales of each standard commercial article or class of commercial articles between renegotiable and commercial sales for the period from the beginning of the fiscal year to and including September 30, 1976, in a similar manner to that required with respect to an RB Form 1 for the stub year.

Under section 106(e)(4)(B) of the act (50 U.S.C. App. § 1216(e)(4)(B)), the commercial exemption does not apply unless "at or least 55 percent" of a contractor's or subcontractor's sales of an article or class of articles "in such fiscal year" are sold "for civilian industrial or commercial use," and that the renegotiable sales of the article or class of articles are at a price that "is not in excess of the lowest price at which such article is sold in similar quantity * * * for civilian industrial or commercial use * * *."

In applying the 55 percent test, contractors and subcontractors shall consider only those renegotiable and commercial sales of the article or class of article that occur in the period from the beginning of the fiscal year to and including September 30, 1976. The numerator of the fraction shall be the amount of the sales of the article or class of articles for civilian industrial or commercial use in the period from the beginning of the fiscal year to and including September 30, 1976, and the denominator of the fraction shall be the total amount of the renegotiable and commercial sales of the article or class of articles on or prior to September 30, 1976. Since sales under a contract with a named Department or related subcontract are not sales for civilian industrial or commercial use, no part of the sales of the article or class of articles on or after October 1, 1976 shall be used in the computation.

Dated: August 4, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[FR Doc. 78-22210 Filed 8-8-78; 8:45 am]

[7910-01]

STANDARD FORMS OF CONTRACTOR'S REPORT (RB FORM 1) AND APPLICATIONS FOR COMMERCIAL EXEMPTION

Extension of Time for Filing

By notice published in the FEDERAL REGISTER on July 12, 1978 (43 FR 30002), the Renegotiation Board extended the time for filing certain standard forms of contractor's report (RB Form 1) and applications for commercial exemption to August 21, 1978.

At the time of that extension, the House of Representatives had passed a bill (H.R. 12934) funding the Renegotiation Board through March 31, 1979. Subsequent to the publication on July 12, 1978, of that extension of time for filing with the Board, the Senate on August 3, 1978, passed a bill (H.R. 12934) which increased the amount of the appropriation and enlarged the term over which it could be expended by 2 months, through May 31, 1979.

In light of this action, and in order to provide more time for contractors to prepare the required filings, the Board is likewise extending the time for filing.

Accordingly, effective this date, notice is hereby given that all contractors with fiscal years ending after September 30, 1976, and before May 31, 1978, are granted an extension of time for filing standard forms of contractor's report (RB Form 1) and applications for commercial exemption until October 20, 1978.

Dated: August 4, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[FR Doc. 78-22211 Filed 8-8-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-362]

ALCON LABORATORIES, INC.

Application and Opportunity for Hearing

AUGUST 2, 1978.

Notice is hereby given that Alcon Laboratories, Inc. ("appliant"), has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934 (the "1934 act") for an order granting applicant an exemption from filing a form 10-K required by the provisions of sections 13 and 15(d) of the 1934 act.

The applicant states, in part: 1. On May 31, 1978, applicant was merged into the Delaware Bay Co., a wholly owned subsidiary of Nestle, S.A. As a result of the merger, applicant no longer has any publicly traded common stock.

2. Preparation and filing of a form 10-K for the fiscal year ended April 30, 1978, will cost approximately $75,000 including manpower, audit fees, and printing.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person, not later than August 28, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

E. Wayne Mercer, Alcon Laboratories, Inc., 6201 South Freeway, P.O. Box 1959, Fort Worth, Tex. 76101.

[8010-01]

[File No. 81-363]

ASSOCIATED WHOLESALERS, INC.

Application and Opportunity for Hearing on a Partial Exemption From the Requirements of Sections 13 and 15(d) of the Securities Exchange Act of 1934 Pursuant to Section 12(h) of That Act

AUGUST 2, 1978.

Notice is hereby given that Associated Wholesalers, Inc. (the "applicant"), has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 act") for an order partially exempting the applicant from the reporting provisions of that act.

The application states in part: (1) That the applicant is a wholesale grocery purchasing cooperative under section 1385 et seq. of the Internal Revenue Code of 1954, operating in south-central Pennsylvania and northern Maryland;

(2) That there is virtually no trading market in the applicant's securities and, by virtue of the applicant's share repurchase policies, no market is likely to develop in the future;

(3) That the applicant proposes annually, within 90 days of the end of its fiscal year, to file a registration statement on form S-1 in connection with its continued solicitation of new members and the sale of common stock and subordinated debt to existing members, the prospectus of which will be sent to virtually all current security holders;

(4) That the applicant sends a quarterly financial statement to its members;

(5) That the applicant requests an exemption from filing its annual report on form 10-K, for each year in which it files a form S-1 registration statement as described above, and from filing part I of its quarterly report on form 10-Q.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than August 28, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application in whole or in part may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

Joseph M. Harenza, Esq., Stevens & Lee, 607 Washington Street, Reading, Pa. 19601.

Harlan W. Helzer, Treasurer, Associated Wholesalers, Inc., Box 1928, 600 Arsenal Road, York, Pa. 17405.

[FR Doc. 78-22244 Filed 8-8-78; 8:45 am]

[8010-01]

[Release No. 34-14934; File No. SR-BSE-78-7]

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. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 29, 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 V, Section 3 of the Rules (amended to read as follows):

SEC. 3. In all sales or contracts for delivery of securities between members of the Exchange the parties shall settle the contracts in accordance with the terms and conditions prescribed by the registered clearing agency through which clearing and settlement is to take place.

STATEMENT OF BASIS AND PURPOSES

PURPOSE OF THE PROPOSED RULE CHANGE

The purpose of the rule change is to eliminate a conflict concerning the size of delivery of stocks with other registered clearing agencies through which clearing and settlement may take place.

BASIS OF THE PROPOSED RULE CHANGE

The basis under the act for the proposed rule change is section 6(b)(5) to foster cooperation and coordination in the regulation of clearing of security transactions.

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. On or before September

13, 1978, 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 30, 1978.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 6, 1978.

[FR Doc. 78-22137 Filed 8-8-78; 8:45 am]

[8010-01]

[File No. 81-340]

CARBORUNDUM CO.

Application and Opportunity for Hearing

AUGUST 2, 1978.

Notice is hereby given that the Carborundum Co. ("applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 act") for an order exempting the applicant from the obligation to file an annual report on form 10-K for the year ended December 31, 1977, and all other reports required to be filed pursuant to sections 13 and 15(d) of the 1934 act.

The application states in part that: 1. The applicant became a wholly owned subsidiary of Kennecott Copper Corp. ("Kennecott") on January 12, 1978.

2. The only securities of the applicant that remain outstanding are: (a) $17,223,000 principal amount, 6 percent sinking fund debentures due 1992, held of record by 136 holders; and (b) $40,000,000 principal amount, 9¼ percent sinking fund debentures due 2000, held of record by 148 holders. There is very little trading activity in the debentures.

3. The financial condition and the affairs of the applicant will be reflected in the annual and periodic reports filed by Kennecott. Because there are no stockholders and limited trading in the debentures, the benefits derived from the continued filing of annual or other reports under the 1934 act are disproportionate to the time, effort, and expense required to prepare such filings.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than August 28, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

Robert F. Morten, Esq., General Counsel, The Carborundum Co., Carborundum Center, Niagara Falls, N.Y. 14302.

Roger W. Kapp, Esq., Donovan, Leisure, Newton & Irvine, 30 Rockefeller Plaza, New York, N.Y. 10020.

[8010-01]

[Rel. No. 20656; 70-6194]

CENTRAL POWER & LIGHT CO.

Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

AUGUST 12, 1978.

Notice is hereby given that Central Power & Light Co. ("C.P. & L."), P.O. Box 2121, Corpus Christi, Tex. 78403, an electric utility subsidiary company of Central & South West Corp., a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating sections 6(a) and 7 of the act and rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

C.P. & L. proposes to issue and sell at competitive bidding up to $75,000,000 principal amount of its first mortgage bonds, series P, to be dated September 1, 1978, and to mature September 1, 2008 ("bonds"). The interest rate and redemption prices of the bonds, and the price to be paid to C.P. & L. (which will not be less than 99 percent nor more than 102.75 percent), will be determined through competitive bidding. The bonds will enjoy refunding protection until September 1, 1983, and will be subject to a 1-percent sinking fund beginning in 1979.

The bonds will be issued under and secured by C.P. & L.'s indenture, dated November 1, 1943, between it and the First National Bank of Chicago and R. R. Manchester, trustees, as previously amended and supplemented, and as to be further amended by a supplemental indenture to be dated September 1, 1978. The supplemental indenture will set forth the terms, provisions, and characteristics of the bonds and will extend various convenants and conditions in the Indenture and confirm the lien of the Indenture on certain "after-acquired property" constructed or otherwise acquired acquired by C.P. & L. since the date of the last previous supplemental indenture.

The net proceeds from the sale of the bonds will be applied to future construction and fuel exploration and development expenditures and to repay short-term borrowings, which are expected to be approximately $49,000,000 as of the date of sale of the bonds. It is stated that: (1) No proceeds from the bonds nor from any borrowings retired by their issuance will be or have been utilized to pay the cost of facilities which would not be needed to provide service to its customers if it were not part of the Central and South West system, and (2) no expenditures will be made by C.P. & L. for the construction or acquisition of any facility not so needed prior to the time all funds covered by this declaration have been expended (assuming that none of the facilities, construction, or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Ad. Proc. File No. 3-4591), would be needed to provide service to customers of C.P. & L. if it were not part of the Central and South West system).

C.P. & L.'s estimated construction and fuel exploration and development expenditures for the years 1978 through 1980 are estimated at $237,382,000, $231,892,000, and $174,274,000, respectively. Approxi-

mately $92,694,000 of the 1978 estimated total had been expended as of June 30, 1978.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $151,500, including printing expenses of $60,000, trustee fees of $20,000, and legal fees of $21,000. No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in rule 23 of the general rule and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-22130 Filed 8-8-78; 8:45 am]

[8010-01]

[Release No. 34-15018; File No. SR-CBOE-78-7]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; 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 February 28, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Rule 2.9 *Appointments Committee*

The Appointments Committee shall consist of at least nine persons including the chairman of the Appointments Committee, at least six of whom shall be Exchange members [and at least three of whom shall not be Exchange members]. At least one of the [Exchange members] *persons* on the Appointments Committee shall be associated with a member organization conducting a public business under chapter IX of the rules. Members of the Appointments Committee shall not be affiliated with any board broker or board broker applicant, nor shall they become affiliated with any board broker or board broker applicant for 12 months after serving on the Appointments Committee. No member on the Appointments Committee shall participate in the discussion or consideration regarding the appointment of a board broker to a station where such member is regularly engaged in trading activities.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purpose of this proposed rule change is to provide greater flexibility in structuring the composition of the Appointments Committee. Experience has shown that it is difficult and quite expensive to find qualified, non-members of the Exchange willing to commit the time necessary to discharge the duties of such committee. Consequently, by retaining the minimum number of committee members and requiring that at least six be Exchange members, the Exchange preserves its ability to appoint up to three qualified non-members, but the operation of the committee shall not be restricted if such non-members cannot be identified and so appointed.

The provisions of this proposal are consistent with section 6(b)(3) and 6(b)(5), for the proposal provides for fair representation of members in the administration of Exchange affairs which is in furtherance of protecting the public interest.

No comments were solicited regarding this proposed rules change.

The Exchange does not believe that this proposed change will impose a burden upon competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 (the "act"). Interested persons are invited to submit written date, views and arguments concerning the foregoing.[1] Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submission 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 30, 1978.

For the Commission by the division of market regulation, pursuant to delegated authority.

AUGUST 1, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-22134 Filed 8-8-78; 8:45 am]

[1] Through inadvertence, publication of the CBOE proposal did not occur immediately after submission of the proposal by the CBOE. While more than 60 days have passed since submission of the CBOE proposal and the Commission is no longer authorized to abrogate this proposal summarily pursuant to section 19(b)(3)(A) of the act, the Commission will consider any comments which are received in the exercise of its regulatory oversight responsibilities and, in particular, to determine whether it should exercise its authority under section 19(c) of the act concerning the constitution of the CBOE Appointments Committee.

[8010-01]

[File No. 81-358]

COLONY FOODS, INC.

Application and Opportunity for Hearing

AUGUST 1, 1978.

Notice is hereby given, That Colony Foods, Inc., ("applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order granting applicant an exemption from the provisions of section 15(d) of the 1934 Act.

The applicant states, in part:

1. On June 20, 1978 Knott Foods, Inc., a wholly owned subsidiary of Knott Hotels Corp., merged into applicant. As a result of the merger, the shareholders of the applicant received $6.50 per share in cash for their stock and applicant no longer has any publicly owned common stock. Knott Hotels Corp. is now the sole shareholder of applicant.

2. The applicant has filed with the Commission its proxy statement, dated May 30, 1978, containing audited financial statements for the year ended July 3, 1977, plus a consolidated summary of operations of applicant for the 5 years ended July 3, 1977.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are

referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given, That any interested person not later than August 28, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desireability of a hearing thereon. Any such communication or request should be addressed: Secretary Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

John Breckenridge, Esq., Kindel & Anderson, 1020 North Broadway, Fourth Floor, Santa Ana, Calif. 92701.

William Jones, Argue, Freston & Myers, 626 Wilshire Boulevard, Los Angeles, Calif. 90017.

[FR Doc. 78-22246 Filed 8-8-78; 8:45 am]

[8010-01]

[File No. 81-370]

HENRY PRATT CO.

Application and Opportunity for Hearing

August 1, 1978.

Notice is hereby given, That Henry Pratt Co. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to section 15(d) of the 1934 Act.

The applicant states, in part:

1. The applicant was a publicly-held company with common stock registered pursuant to section 12(g) of the 1934 Act, and subject to the reporting provisions of section 13 of that Act.

2. As the result of an offer to purchase applicant's common stock made by Amsted Industries, Inc. ("Amsted"), applicant's shares are now held by fewer then 100 persons, and it is anticipated that Amsted will ultimately own 100 percent of applicant's shares. There is no trading in the common stock of applicant.

In the absence of an exemption, applicant will be required to file certain periodic reports with the Commission for its fiscal year ending October 30, 1978.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Office of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given, That any interested person not later than August 28, 1978, may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

Michael H. Kerr, Esq., Kirkland & Ellis, 200 East Randolph Drive, Chicago, Ill. 60601.

[8010-01]

[Release No. 10347; 812-4309]

INCOME TRUST FOR U.S. GOVERNMENT GUARANTEED SECURITIES

Filing of Application For Exemption From the Provisions

JULY 31, 1978.

Notice is hereby given that Income Trust For U.S. Government Guaranteed Securities ("applicant"), Suite 204, Webster Building, Concord Plaza, 3411 Silverside Road, Wilmington, Del. 19810, a diversified, open-end investment company registered under the Investment Company Act of 1940 (the "act"), filed an application on May 10, 1978, for an order pursuant to section 6(c) of the act granting an exemption from the provisions of section 22(d) of the act with respect to the proposed sale of applicant's shares at net asset value without a sales charge to participants in a proposed distribution reinvestment program. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was established as a business trust under Pennsylvania law by a Declaration of Trust as of December 17, 1976. The application states that applicant was formed for the purpose of investing in and managing a portfolio of securities issued or guaranteed by the U.S. Government or its agencies (the "securities"); and that the securities invested in by applicant are primarily mortgage-backed securities of the modified pass-through type fully guaranteed as to principal and interest by the Government National Mortgage Association, although up to 20 percent of the portfolio may be other types of securities issued or guaranteed by the U.S. Government or by its agencies. The application further states that applicant is designed for individuals and institutions seeking high current income with liquidity and security of principal.

The application further states that Loeb Rhoades, Hornblower & Co. ("Loeb Rhoades, Hornblower") serves as the exclusive distributor of applicant's shares, and as administrator of applicant, under an administration and distribution agreement; that Provident Institutional Management Corp., a wholly-owned subsidiary of the Provident National Bank, ("Provident"), serves as investment adviser to applicant; and that Provident serves as a subadvisor.

Applicant also states that the minimum initial investment in its shares (including the applicable sales charge) is $1,250, and that subsequent investment may be made through authorized dealers in the minimum amount of $1,000, or by mail directly to The Bank of New York in the minimum amount of $100. Applicants states that the public offering price of its shares consists of their net asset value plus a sales charge, as follow:

On purchases of at least—	But less than—	Sales charge as a percentage of the offering price [1]	Sales charge as a percentage of the net asset value [2]
$100	$50,000	2.5	2.56
$50,000	100,000	2.0	2.04
$100,000	250,000	1.5	1.52
$250,000	500,000	1.0	1.01
$500,000 or more		.5	.50

[1] Amount invested.
[2] Amount received by the Fund.

PROPOSED DISTRIBUTION REINVESTMENT PROGRAM

According to the application, Loeb Rhoades, Hornblower is a sponsor and underwriter of Government securities trust, GNMA series 1 and subsequent series ("trusts"), a series of unmanaged unit investment trusts registered under the act. The principal objectives of the trusts are preservation of principal and current monthly distributions of interest and principal (including prepayment and redemption proceeds, if any) through an investment in a diversified portfolio consisting primarily of mortgage-backed obligations of the modified pass-through type fully guaranteed as to principal and interest by the Government National Mortgage Association; in addition, up to 20 percent of each of the Trusts may consist of other types of obligations on which the payment of principal and interest is also backed by the full faith and credit of the United States.

The public offering price of a unit of undivided interest of the trusts ("unit") is equal to the aggregate offering price of the underlying obligations, divided by the number of units outstanding, plus a sales charge equal to 3.5 percent of the public offering price.

Applicant proposes to permit holders of units of the trusts to purchase shares of applicant at net asset value, without a sales charge, by reinvestment of distributions from the trusts. Applicant states that there would be no initial or subsequent minimum investment applicable to such purchases; that all unitholders of the trusts will be eligible to participate in the distribution reinvestment program and will be furnished a prospectus of applicant and a form of notice of election; and that such notice of election must be used by unitholders to elect to participate in the program or to specify the basis of such participation (both distributions of interest and distributions of principal and capital gains, if any, or either type of such distributions) and must be received at least 10 days prior to a record date applicable to any distribution in respect of the units in order for the election to be in effect as to such distribution. Applicant further states that an election to participate in the program will be effective until revoked in writing by the participant. Under applicant's proposal, expenses of offering the distribution reinvestment program to unitholders of the trusts will be borne by the sponsors as principal underwriters of the trusts; however, once a unit holder elects to participate in the distribution reinvestment program, his account will be handled and the expenses thereof borne in the same manner as the account of any other shareholder of applicant.

Section 22(d) of the act provides, in part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current offering price described in the prospectus and that, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Applicant asserts that it will be unable to implement the foregoing reinvestment program unless that program is exempted from the provisions of section 22(d). Accordingly, it seeks such an exemption.

Applicant argues that the largest part of a sales charge on mutual fund shares is attributable to soliciting a customer initially, ascertaining his financial requirements and counseling him on investments; that, where the customer has already been solicited and his financial requirements have been ascertained, the sales costs are reduced; and that it is desirable to pass the cost savings on to the investor. Applicant contends that unitholders desiring to reinvest distributions from the trusts in applicant's shares are investing in a product substantially similar to that offered by the trusts, and that they made their basic investment decision with respect to that product when they made their investments in the trusts. At present, applicant states that it is believed that there is little or no additional sales cost that could be allocated to the purchase of shares by such unitholders through reinvestment of distributions from the trusts, and that, accordingly, such investors, rather than applicant's distributor, should receive the benefit of lower sales costs to the distributor through reinvestments at net asset value rather than with payment of a sales charge.

The application states that applicant reserves the right to redeem shareholder accounts the aggregate net asset value of which is less that $1,000 in order to eliminate the fixed costs incurred by applicant in maintaining these accounts. In addition, as noted above, applicant has a minimum required initial investment and subsequent investments. Applicant asserts, however, that it is appropriate not to impose such minimum initial or subsequent investment requirements on participants in the reinvestment program since the fixed costs it incurs in maintaining those accounts are expected to be substantially mitigated for several reasons. Among those reasons are that since all reinvestments by holders of units in one of the trusts will be made on the same day of each month, a relatively large amount of proceeds will be received at once, rather than a large number of small investments occurring at erratic times; this fact will permit applicant to invest all the proceeds from the month's reinvestments at once, thus obtaining the transactional benefits of a relatively large purchase of securities.

In addition, the proposed plan would provide a broad base of investors with ready cash to be invested and would help assure applicant of a positive cash flow, thereby serving the best interests of applicant and its shareholders in several ways. First, applicant asserts, its operating expenses will not vary proportionately with asset size, so that a growing asset base would tend to reduce the per share cost of operations borne by shareholders. Moreover, applicant argues, positive cash flow would assist applicant in meeting share redemptions without disturbing its established investment positions, and would enhance investment flexibility by reducing the proportion of assets which applicant would be required to devote to cash reserves and would also permit the gradual build-up of investment positions.

Section 6(c) of the act, provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the act.

Notice is further given that any interested person may, not later than August 23, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompa-

nied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-22131 Filed 8-8-78; 8:45 am]

[8010-01]

[Rel. No. 20657; 70-6139]

INDIANA & MICHIGAN ELECTRIC CO.

Proposed Acquisition of a Coal Lease

AUGUST 2, 1978.

Notice is hereby given that Indiana & Michigan Electric Co. ("I&M"), 2101 Spy Run Avenue, Fort Wayne, Ind. 46801, an electric utility subsidiary of American Electric Power Co., Inc. ("AEP"), a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating sections 9 and 10 of the act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

I. & M. proposes to purchase from Pacific Power & Light Co. ("Pacific"), an unaffiliated company, a leasehold interest in the coal underlying section 16, township 44 north, range 70 west in Campbell County, Wyo. ("section 16"). Title to such leasehold interest would be acquired by Franklin Real Estate Co. ("Franklin"), a subsidiary of AEP, on behalf of I. & M., as beneficial owner, by assignment from Pacific of a coal lease granted to it by the State of Wyoming. Franklin presently holds a lease for grazing rights over the surface of section 16.

Section 16 contains 1 square mile of 640 acres of land, is owned in fee by the State of Wyoming, and is located in the eastern Powder River basin. The lease to Pacific was renewed in February 1975 for a period of 10 years. It is stated that the lease can be renewed again at its next termination in 1985. The terms of the assignment include an initial payment at closing of $950,000, and production royalties of 16.2 cent per ton for the first 25 million tons of coal mined and of 10 cent per ton for each ton mined thereafter. A portion of the production royalties are to be prepaid in three equal advance royalty payments of $1,350,000 each at closing, and 6 months and 12 months after closing. The Assignment is subject to the consent of the Wyoming Board of Land Commissioners.

It is stated that studies conducted by an independent consultant for AEP indicate there are at least some 39 million tons of recoverable coal in section 16, all of which can be mined by relatively inexpensive surface mining methods. It is expected, based upon information available concerning coal found and presently being mined in the eastern Powder River basin, that coal mined from section 16 would average 8,200-8,500 Btu per pound and have a sulfur content of approximately 0.5 percent. Coal of these characteristics will meet current sulfur dioxide emission standards and could be used for blending with higher sulfur eastern coals. These studies indicate that section 16 can be mined in isolation and at an optimum production level of approximately 2.5 million tons annually and would yield an f.o.b. railway cost comparable to existing surface operations in the eastern Powder River basin. This coal would be delivered to AEP system plants at a cost per million Btu which compares favorably with alternative eastern sources of low-sulfur coal. The studies also indicate that in the event that additional Federal leases underlying 33,000 acres of adjoining Franklin-owned reserves can successfully be obtained, significant economies could be realized through the use of common facilities and joint operation of the mining activities.

It is proposed that I. & M. purchase and own, through Franklin, interests in the coal lease covering section 16 since it is believed that coal mined from the lease and the adjoining reserves would most likely ultimately be used in its generating plants.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction, except that the Board of Land Commissiners of the State of Wyoming must give its written consent to the assignment of the coal lease from Pacific to Franklin. Fees, commissions, and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $5,000.

Notice is further given that any interested person may, not later than August 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, and reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as amended or as it may be further amended, may be granted as provided and in the manner prescribed by rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-22133 Filed 8-8-78; 8:45 am]

[8010-01]

[File No. 81-376]

MEDICAL COMPUTER SYSTEMS, INC.

Application and Opportunity for Hearing

AUGUST 1, 1978.

Notice is hereby given that Medical Computer Systems, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting applicant an exemption from the provisions of section 15(d) of the 1934 act.

The applicant states, in part:

1. On May 11, 1978, applicant merged with and became a wholly-owned subsidiary of Trans Union Corp. As a result of this merger, applicant no longer has any publicly owned common stock.

2. No shareholders remain dissenting from the merger.
3. The merger transaction was reported in detail in Trans Union Corp. registration statement No. 2-60995 (effective April 14, 1978).

Applicant argues that the granting of the exemption would not be inconsistant with the public interest or the protection of investors.

For a more detailed statement of the information presented, interested persons are referred to said application which is on file in the office of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given, that not later than August 28, 1978, any interested person may submit to the Commission in writing his views on any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

William B. Moore, Secretary, Trans Union Corp., 90 Half Day Road, Lincolnshine, Ill. 60015.

[8010-01]

[Release No. 15031; SR-NASD-78-5]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

AUGUST 3, 1978.

On June 8, 1978, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and rule 19b-4 thereunder, copies of a proposed rule change to amend the NASD board of governors' interpretation of article III, section 1 of the NASD Rules of Fair Practice to require underwriters for investment companies to notify the NASD if a check received from a dealer for payment of an open transaction is returned by a bank as uncollectable. According to the NASD, the purpose of this amendment is to alert the NASD to violations of its prompt payment requirements and to permit it to detect at an early date potential financial problems on the part of member dealers.

Notices of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14873, June 21, 1978) and by publication in the FEDERAL REGISTER (43 FR 28065, June 28, 1978). Public comments were solicited on the proposed rule change but none were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities associations, and in particular, the requirements of section 15A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 22242 Filed 8-8-78; 8:45 am]

[8010-01]

[Release No. 34-15019; File No. SR-PSE-78-11]

PACIFIC STOCK EXCHANGE, INC.

Self-Regulatory Organizations; 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. No. 94-29, 16 (June 4, 1975), notice is hereby given that on July 26, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Pacific Stock Exchange, Inc. ("PSE"), hereby amends paragraph (g) of the "Definitions" section of the rules of the board of governors (the "rules") in the following manner (brackets indicate material deleted, and italics indicate additions):

DEFINITIONS

SEC. 1. Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

(g) "Floor" or "Floors" shall mean, *individually or collectively, depending upon the context in which the terms are used, the equity trading floor in Los Angeles, the equity trading floor in San Francisco, or the options trading floor.* [any or all Trading Floors of the Pacific Stock Exchange, Inc.]

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to conform the rules to reflect current PSE operations by describing three physicially distinct Exchange facilities which in practice, are used for trading on the PSE.

The proposed rule change promotes the Exchange's capacity: (i) To carry out the purposes of the Securities Exchange Act of 1934 (the "act"), and (ii) to comply, and to enforce compliance by its members and persons associated with its members, with the act, and the rules and regulations thereunder, and protects investors and the public interest by assuring complete and fair disclosure of the facilities through which dealings on the exchange are conducted.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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, Securities and Exchange 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 30, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 1, 1978

FR Doc. 78-22141 Filed 8-8-78; 8:45 am]

[8010-01]

[Release No. 34-15014; File No. SR-PHLX 78-15]

PHILADELPHIA STOCK EXCHANGE, INC.

Self-Regulatory Organizations; 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. No. 94-29, 16 (June 4, 1975), notice is hereby given that on July 24, 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

The Philadelphia Stock Exchange, Inc. ("PHLX"), proposes to change its rule 229 which established its centramart system for the automatic execution of orders on its equity floor under predetermined conditions.

At present, member organizations wishing to participate in the Philadelphia Stock Exchange's automated communication and execution system ("PACE") may send to the trading floor market and limit orders up to 399 shares in securities traded under PACE. The changes proposed in rule 229 would permit member organizations to send to the floor market orders up to 599 shares while the ceiling on size of limit order sent to the floor through the system would remain at 399 shares.

PHLX's STATEMENT OF PURPOSE

The purpose of the proposed rule change is to provide, as an alternative an efficient system under which specialist on an automatic and predetermined basis can expand their market-making activities to serve the investing public. The present submission is basically similar to file No. SR-PHLX 76-23 while expanding and refining the standards for execution of orders under the PACE system.

PHLX's STATEMENT OF STATUTORY BASIS

The proposed rule change, by providing an alternative system for the execution of orders on the equity floor, is consistent with the registration and functions of odd-lot dealers and specialists as contemplated under section 11(b) under the Securities Exchange Act of 1934, as amended.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS

The PHLX states that no written comments were received from members on the proposed rule change. Since the beginning of operation of the PACE system, oral comments and recommendations have been received from specialists, members, and technical resource people.

BURDEN ON COMPETITION

The PHLX asserts that no burden on competition will be imposed by the proposed changes in its rule 229.

On or before September 13, 1978, 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 it 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, Securities and Exchange 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 30, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 28, 1978.

FR Doc. 78-22139 Filed 8-8-78; 8:45 am]

[8010-01]

[File No. 81-351]

REPUBLIC METAL PRODUCTS, INC.

Application and Opportunity for Hearing

AUGUST 1, 1978.

Notice is hereby given that RMP Metal Corp. ("applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), on behalf of Republic Metal Products, Inc. (the "registrant") for an order exempting registrant from the provisions of section 15(d) of the 1934 Act.

The applicant states, in part:

1. On December 12, 1977, applicant, a privately held corporation, merged with the registrant. As a result of the merger, registrant no longer has any publicly owned common stock.

2. The registrant has filed with the Commission its form 10-Q for the period ended January 31, 1978 which reflects the merger.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than August 28, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SERVICE LIST

Jonathan Director, Esq., Bressler, Lipsitz & Rothenberg, 90 Broad Street, New York, N.Y. 10004.

[FR Doc. 78-22249 Filed 8-8-78; 8:45 am]

[8010-01]

[Rel. No. 20653; 70-6188]

VERMONT YANKEE NUCLEAR POWER CORP. AND YANKEE ATOMIC ELECTRIC CO.

Proposed Agreement Concerning Uranium Production

AUGUST 1, 1978.

Notice is hereby given that Vermont Yankee Nuclear Power Corp. ("Vermont Yankee"), 77 Grove Street, Rut-

land, Vt. 05701, and Yankee Atomic Electric Co. ("Yankee Atomic"), 20 Turnpike Road, Westborough, Mass. 01581, both indirect electric utility subsidiary companies of New England Electric System and Northeast Utilities, both of which are registered holding companies, have filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 9(a) and 10 of the act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Vermont Yankee and Yankee Atomic propose to enter into a production purchase agreement ("agreement"), with Earth Sciences, Inc. ("ESI"), a corporation not affiliated with applicants, concerning the purchase from ESI of uranium oxide ("U_3O_8") produced from phosphoric acid by an extraction facility to be constructed, owned, and operated by ESI. The Agreement provides for certain payments, which may include prepayment for uranium and requires ESI to grant to Vermont Yankee and Yankee Atomic as security for such prepayments a security interest in the extraction facility, ESI's contract rights with the supplies of the phosphoric acid and certain mineral properties owned and leased by ESI. The acquisition of such security interest by applicants is subject to the approval of this Commission under section 9(a) of the act.

Applicants are operators of commercial nuclear-powered electric generating plants and have a continuing long-term requirement for U_3O_8 for fabricating fuel to be consumed in their plants. Vermont Yankee and Yankee Atomic require approximately 255,000 and 191,500 pounds of U_3O_8, respectively, per year in order to continue efficient operation. Vermont Yankee's requirements are filled through 1981, with 237,000 pounds unfilled for 1982. Yankee Atomic's requirements for U_3O_8 are currently filled through 1979 with 32,000 pounds unfilled for 1980. Thereafter applicant's requirements for U_3O_8 are unfilled.

The extraction facility has been designed by Kilborn/NUS, Inc., based upon technology developed at the Oak Ridge National Laboratory and further research at the Colorado School of Mines Research Institute. Applicants' consultants have concluded that the project is based upon a viable process part of which, although commercially unproven, is comparable to similar projects by other major corporations and part of which is comparable to a conventional uranium ore processing mill. The ESI plant has a design capacity of approximately 100,000 pounds of U_3O_8 per year.

The agreement obligates applicants to purchase the output of the extraction facility (each applicant being committed for 50 percent) for the term of the agreement (20 years, subject to adjustment under specified circumstances). Projection estimates indicate an annual rate of 83,000 pounds of U_3O_8 beginning in 1980, which rate increases to 101,000 pounds in 1984. At such rate, Vermont Yankee and Yankee Atomic would have approximately 20 percent and 25 percent, respectively, of their annual U_3O_8 requirements filled under the agreement.

The construction cost of the extraction facility will be financed by ESI with a Canadian bank which may take a lien upon the extraction facility and a pledge of the agreement as security. The agreement gives applicants an opportunity to review the definition of capital cost estimate based upon final engineering and design studies developed by ESI's consultants and to terminate their obligations under the agreement if the capital cost estimate is over $11,000,000 and: (1) Applicants and ESI cannot agree that such estimate can be reduced without impairing the operation of the extraction facility, or (2) applicants are not satisfied that ESI can finance the additional costs of construction. If applicants terminate the agreement pursuant to this provision, ESI is obligated to repay any prepayments made by applicants in accordance with the terms of the agreement.

The agreement provides for applicants to pay for U_3O_8 actually produced at a price computed in accordance with a formula which reflects a fixed base price, escalated from the date of first production, plus an added factor based upon a percentage of the final capital cost of the extraction facility. Applicants believe that such price compares favorably with the current market price of $40 per pound and expects that this favorable comparison will remain during the term of the agreement. The agreement also provides for certain payments to be made by applicants in the event actual production is low, which payments are deemed to be prepayments for future deliveries of uranium. ESI is obligated to make such future deliveries or to repay the prepayments in accordance with the terms of the agreement.

All purchase price payments will be paid into an escrow account from which disbursements will be made to ESI's financing bank and to ESI to reimburse it for operating expenses and a management fee for uranium actually produced, with any balance being held for application to prepayment of the bank financing or to future payments required of applicants. The escrow arrangement will continue until such time as the ESI financing has been discharged.

As security for ESI's obligations in connection with the potential prepayments, applicants are to receive security interests in the extraction facility and in ESI's contract rights with Western Co-Operative Fertilizers, Ltd. (both of which may be subordinated to the financing bank), and in certain phosphorous mineral properties owned or leased by ESI and located in Idaho. The agreement provides that upon ESI's default applicants shall sell such collateral, applying the proceeds toward the satisfaction of the outstanding amount of ESI's obligations, with any excess being paid to ESI and any deficiency being payable by ESI to applicants in 10 annual installments with interest.

Applicants plan to meet their obligations under the agreement through internally generated funds. As U_3O_8 is produced by ESI and purchased, processed, and consumed by the applicants, the amounts paid by applicants to ESI under the agreement will be billed to the applicants' sponsors under the respective power contracts.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $12,000, exclusive of legal fees. It is stated that no State commission and no Federal Commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than August 25, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the

hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS.
Secretary.

[FR Doc. 78-22132 Filed 8-8-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

REGION IV—ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, will hold a public meeting from 10 a.m. to 4 p.m., on Tuesday, September 5, 1978, at the Regional Office Conference Room, Room 502, 1375 Peachtree Street NE., Atlanta, Ga., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information, write or call Clarence B. Barnes, District Director, U.S. Small Business Administration, 1720 Peachtree Road NW., 6th Floor, Atlanta, Ga., 404-257-4749.

Dated: August 1, 1978.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-22215 Filed 8-8-78; 8:45 am]

[8025-01]

REGION IV ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, will hold a public meeting at 10 a.m., Tuesday, September 12, 1978, in Room 531, 1801 Assembly Street, Columbia, S.C., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information, write or call Vern F. Amick, District Director, U.S. Small Business Administration, 1801 Assembly Street, Columbia, S.C. 29201, 803-765-5373.

Dated: August 3, 1978.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-22212 Filed 8-8-78; 8:45 am]

[8025-01]

[Application No. 04/04-5139]

VENTURE CAPITAL CORP.

Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et seq.) has been filed by M Venture Capital Corp. (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1978).

The officers, directors and stockholders are as follows:

Raul P. Masvidal, 201 Galen Dr., Key Biscayne, Fla. 33149, chairman of the board, president, director and 100 percent stockholder.

Jose Luis Castro, 2279 Coral Way, Miami, Fla. 33145, vice president and director.

I. Edward London, 1121 Crandon Blvd., Key Biscayne, Fla. 33149, secretary, treasurer and director.

The applicant, a Florida corporation, will maintain an office at 1309 Brickell Avenue, Miami, Fla. 33130 and will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 1,000 shares of common stock to Mr. Raul P. Masvidal.

The applicant will operate within the investment policies of section 107.101(c) of the regulations. The applicant anticipates being both equity and loan oriented in its investment decisions and policy. The applicant intends to initially work with individuals who are considered socially and/or economically disadvantaged oriented toward construction and certain service functions.

Applicant also intends to provide technical assistance, some clerical support and financial counseling to assure the success of its investments and the entrepreneurs who are being assisted.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operations of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and SBA rules and regulations.

Any person may, not later than August 24, 1978 submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Miami, Fla.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 2, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-22213 Filed 8-8-78; 8:45 am]

[8025-01]

[License No. 03/03-5137]

SCI MEDIA VENTURES, INC.,

License to Operate as a Small Business Investment Company

On May 5, 1978, a notice was published in the FEDERAL REGISTER (43 FR 19489), stating that SCI Media Ventures, Inc., located at 1625 I Street NW., Washington, D.C. 20006, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1977), for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business May 22, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued license No. 03/03-5137 to SCI Media Ventures, Inc. on July 10, 1978, to operate as a small business investment company, pursuant to section 301(d) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 2, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-22214 Filed 8-8-78; 8:45 am]

[4710-07]

DEPARTMENT OF STATE

[Public Notice CM-8/86]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The Working Group on Safety of Fishing Vessels of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 10 a.m. on Thursday, August 10, 1978 in Room 2466 of the Federal Building, 915 Second Avenue, Seattle, Wash. The short time frame for this meeting relates to the press of business immediately prior to and in preparation for the Intergovernmental Maritime Consultative Organization (IMCO) meeting in London in September. Any inconvenience caused by this short notice is regretted.

The purpose of the Working Group meeting is to:

Review the agenda for the 21st session of IMCO's Subcommittee on Safety of Fishing Vessels, to be held in London, September 18-22, 1978;

The agenda for the 21st session includes the following items:

Review status of Torremolinos Convention, 1977;
New guidelines for Small Fishing Vessels;
Alinement of voluntary Code and regulatory convention;
Improved Stability Criteria, and
Icing.

The position on fishing vessel construction or equipment safety regulations remains as it has been throughout the development of the Code and the Convention; specifically that no regulations will be proposed until legislation is enacted requiring such regulations.

Requests for further information should be directed to Mr. William A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MMT-5/82), Washington, D.C. 20590, telephone, 202-426-2188.

The Chairman will entertain comments from the public as time permits.

Dated: August 7, 1978.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

[FR Doc. 78-22356 Filed 8-8-78; 8:45 am]

[4810-40]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circular Public Debt Series—No. 19-78]

AUGUST 4, 1978.

TREASURY BONDS OF 2003-2008

Interest Rate

The Secretary of the Treasury announced on August 3, 1978, that the interest rate on the bonds described in Department Circular—Public Debt Series—No. 19-78, dated July 27, 1978, will be 8⅜ percent. Interest on the bonds will be payable at the rate of 8⅜ percent per annum.

L. W. PLUMLY,
Acting Fiscal Assistant Secretary.

[FR Doc. 78-22174 Filed 8-8-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 693]

ASSIGNMENT OF HEARINGS

AUGUST 4, 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 136828 (Sub-19), Cook Transports, Inc. and MC 136828 (Sub-20), Cook Transports,, Inc., now being assigned October 30, 1978 (1 day), at Birmingham, AL in a hearing room to be later designated.

MC 138882 (Sub-20), Wiley Sanders, Inc., now being assigned October 31, 1978 (1 day), at Birmingham, AL in a hearing room to be later designated.

MC 115162 (Sub-389), Poole Truck Line, Inc., is assigned for hearing on November 1, 1978 (3 days), at Birmingham, AL in a hearing room to be later designated.

MC 143423 (Sub-3), William T. Austin, d.b.a. Austin Trucking Company is assigned for hearing on November 6, 1978 (1 day), at Birmingham, AL in a hearing room to be later designated.

MC 126305 (Sub-85) Boyd Bros. Transportation Co., Inc., is assigned for hearing on November 7, 1978 (3 days), at Birmingham, AL in a hearing room to be later designated.

MC 119789 (Sub-411), Caravan Refrigerated Cargo, Inc., now assigned September 11, 1978, at Omaha, NE is canceled and application dismissed.

MC 25798 (Sub-298), Clay Hyder Trucking Lines, Inc.; MC 95540 (Sub-992), Watkins Motor Lines, Inc.; MC 105813 (Sub-227), Belford Trucking Co., Inc.; MC 107515 (Sub-1110), Refrigerated Transport Co., Inc.; MC 113651 (Sub-236), Indiana Refrigerator Lines, Inc.; MC 114045 (Sub-488), Trans-Cold Express, Inc.; MC 116763 (Sub-387), Carl Subler Trucking, Inc.; and MC 143386 (Sub-1), RC Cola, 7-Up Bottling Co. of HGN, Inc. is assigned for hearing September 21, 1978 at Dallas, TX and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 43867 (Sub-40), A. Leander McAlister Trucking Co.; MC 105984 (Sub-18), John B. Barbour Trucking Co. is assigned for hearing September 28, 1978 at Dallas, TX and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 60014 (Sub-66), Aero Trucking, Inc.; and MC123048 (Sub-393F), Diamond Transportation System, Inc., is assigned for hearing September 26, 1978 at Dallas, TX and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 124947 (Sub-89), Machinery Transports, Inc., is assigned for hearing September 20, 1978 at Dallas, TX and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 119988 (Sub-133F), Great Western Trucking Co., Inc., is assigned for hearing September 25, 1978 at Dallas, TX and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 21227 (Sub-12), Midland Truck Lines, Inc., is assigned for hearing September 11, 1978 at Evansville, IN and will be held at Executive Inn 600 Walnut Street.

MC 128521 (Sub-7), Birmingham-Nashville Express, Inc., is assigned for hearing September 11, 1978 at Nashville, TN, and will be held at Room A-951 Federal Court House 801 Broadway.

MC-C-9996, CF Tank Lines, Inc., et al V. Zirbel Transport, Inc., is assigned for hearing September 21, 1978 at Portland, OR and will be held at Room No. 774 Federal Building, 1220 Southwest 3d Avenue.

MC 129107 (Sub-8), R. H. Harding Co., Inc., is assigned for hearing September 18, 1978 at New York, NY and will be held at Room E-2222 Federal Building, 26 Federal Plaza.

MC 99388 (Sub-13), Alltrans Express U.S.A., Inc., is assigned for hearing September 20, 1978 at New York City, NY and will be held at Room E-2222 Federal Building, 26 Federal Plaza.

MC 73165 (Sub-426), Eagle Motor Lines, Inc., is assigned for hearing September 27, 1978 at Dallas, TX and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 121496 (Sub-7), Cango Corp., is assigned for hearing September 19, 1978 at Dallas, TX, and will be held at Room 5A15-17 Federal Office Building, 1100 Commerce Street.

MC 1403 (Sub-4), Central Transfer Co.—Purchase (Portion)— Robert Emanuel and Margaret Emanuel d.b.a. Emanuel's Express; MC-F-13434, Central Transfer Co.—Purchase (Portion)—Robert Emanual and Margaret Emanuel d.b.a. Emanuel's Express is assigned for hearing September 11, 1978 at Philadelphia, PA, and will be held at U.S. Customs Court Room 3rd

Floor, U.S. Customs House Building, 2nd and Chesnut Street.

MC 2900 (Sub-325F), Ryder Truck Lines, Inc.; and MC-F-13489 Ryder Truck Lines, Inc.—Purchase (Portion)—England Transportation Co. of Texas is assigned for hearing October 11, 1978 at San Antonio, TX and will be held at Menger Hotel & Motor Inn, 204 Alamo Plaza.

MC 139495 (Sub-320F), National Carriers, Inc., now being assigned for hearing on September 6, 1978 (1 day), at Columbus, OH, in a hearing room to be later designated.

MC 124947 (Sub-64), Machinery Transports, Inc., now assigned August 8, 1978 for continued hearing at Washington, DC is postponed to August 16, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 114211 (Sub-341), Warren Transport, Inc., now assigned October 10, 1978 at Chicago, IL is canceled and transferred to modified procedure.

MC 138322 (Sub-3), Bhy Trucking, Inc., now assigned September 18, 1978, at St. Louis, MO is canceled and reassigned to September 18, 1978 (5 days), at Houston, TX, in Room 7006 (Tax Court Room), Federal Building and Court House, 515 Rusk Avenue.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-22236 Filed 8-8-78; 8:45 am]

[7035-01]

[Corrected I.C.C. Order No. 57, Amdt. 3; Rev. S. O. No. 1252]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Rerouting or Diversion of Traffic

Upon further consideration of corrected I.C.C. Order No. 57 (Chicago and North Western Transportation Co.) and good cause appearing therefor:

It is ordered,

Corrected I.C.C. Order No. 57 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., August 31, 1978, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, July 26, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-22237 Filed 8-8-78; 8:45 am]

[1505-01]

Office of Proceedings

[Decisions vol. No. 10]

DECISION-NOTICE

Correction

In FR Doc. 78-19486 appearing at page 30960 in the issue for Tuesday, July 18, 1978, in the middle column of page 30962, "MC 103d798 (Sub-16F)" should have read, "MC 103798 (Sub-16F)."

[7035-01]

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 4, 1978.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before August 24, 1978.

FSA No. 43593, Southwestern Freight Bureau, Agent's No. B-758, property moving on point-to-point commodity rates, from and to Port of Houston Authority's Barbours Cut Terminal, at Strang, TX, on the Southern Pacific Transportation Co., to and from points in the United States and Canada. Grounds for relief-rate relationship.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-22232 Filed 8-8-78; 8:45 am]

[7035-01]

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

AUGUST 4, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's gateway elimination rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before August 21, 1978. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a common carrier, by motor vehicles, over irregular routes.

MC 95876 (Sub-E108), filed May 3, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Arthur A. Budde (same as above). *Stone sawing wire and wire rope* (except commodities in bulk and those requiring special equipment), in containers or in trailers having an immediately prior or subsequent movement by water, or by water-rail, or by air, from Asheville, NC, to points in OR and WA. (Gateways eliminated: MN and SD.)

MC 95876 (Sub-E109), filed May 3, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Arthur A. Budde (same as above). *Wallboard, pulpboard, hardboard, insulation, insulation materials, and padding and cushioning* (except commodities in bulk, and commodities requiring special equipment), in containers, or in trailers having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in ID, OR, and WA to points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, RI, SC, VT, VA, WV, and DC. (Gateway eliminated: Cloquet, MN.)

MC 107515 (Sub-E649), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road NE., Atlanta, GA 30326. (1) *Candy and meats, meat products and meat byproducts* (except in bulk), as described in section A of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, in vehicles equipped with mechanical refrigeration, and *those articles distributed by meat packinghouses which are foodstuffs* (except in bulk), as described in section C of appendix I to the report in Descriptions in Motor Carrier Certificates, supra, when in mixed shipments with meats, meat products and meat byproducts, from: Kansas City, MO to points in SC and NC; that portion of AL on, south and east of a line beginning at the GA-AL State line, and extending along U.S. Hwy 80 to junction U.S. Hwy 231, then along U.S. Hwy 231 to the AL-FL State line; and that part of VA on,

south and east of a line beginning at the NC–VA State line, and extending along U.S. Hwy 220 to junction VA Hwy 57, then along VA Hwy 27 to junction U.S. Hwy 29, then along U.S. Hwy 29 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the Atlantic Ocean at Norfolk, VA. (2) *Meats, meat products and meat byproducts* (except in bulk), as described in section A of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, in vehicles equipped with mechanical refrigeration, and those articles distributed by meat packinghouses which are foodstuffs (except in bulk), as described in section C of appendix I to the report in Descriptions in Motor Carrier Certificates, supra, when in mixed shipments with meats, meat products, and meat byproducts from: St. Joseph, MO to points in that part of VA on and south of a line beginning at the VA–NC State line, and extending along U.S. Hwy 220 to junction U.S. Hwy 58, then along U.S. Hwy 58 to junction U.S. Hwy 1, then along U.S. Hwy 1 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the Atlantic Ocean at Norfolk, VA. (Gateway eliminated: Doraville, GA.)

MC 112304 (Sub-E430), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnatti, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in WV. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E431), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in MD. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E432), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in DC. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E433), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in DE. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E434), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in NJ. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E435), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in PA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E436), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in CT. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E437), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in MA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E438), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in RI. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E439), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in NY. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E440), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in NH. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E441), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in WI to points in VT. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E442), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from point in WI to points in ME. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E444), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Allegheny County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.

MC 112304 (Sub-E445), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in PA to points

in WI. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E446), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA to points in WA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E447), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA to points in OR. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E448), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA to points in ID. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E449), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA to points in MT. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E450), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA to points in ND. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E454), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of U.S. Hwy 220 to points in IA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E455), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of U.S. Hwy 220 to points in NE. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E456), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of U.S. Hwy 220 to points in WY. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E457), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of U.S. Hwy 220 to points in KS. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E458), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of U.S. Hwy 220 to points in CO. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E459), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of U.S. Hwy 220 to points in UT. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E460), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of US Hwy 220 to points in NV. Limitation: the certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E461), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in VA on and east of US Hwy 220 to points in CA. Limitation: the certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV and Lima, OH.)

MC 112304 (Sub-E463), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in WA. Limitation: the certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E464), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Colum-

bus, OH 43215. *Guard rail and component parts,* from points in OH to points in OR. Limitation: the certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E465), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in CA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E466), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in ID. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E467), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in NV. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E468), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in UT. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E469), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in AZ. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E470), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in MT. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E471), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in WY. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E472), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in CO. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E473), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in NM. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E474), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in ND. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E475), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in SD. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E476), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in NE. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E447), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in KS. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E478), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in OH to points in OK. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E480), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Butler County, PA, on the one hand, and, on the other, points in VA on and south of a line beginning on U.S. Hwy 250 at the WV-VA State line, and extending southeast along U.S. Hwy 360 at Richmond, then east along U.S. Hwy 360 to the Chesapeake Bay. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.) Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980.

MC 112304 (Sub-E481), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Fayette County, PA, on the one hand, and, on the other, points in Va on and south of a line beginning on U.S. Hwy 250 at the WV-VA State line, then along southeast along U.S. Hwy 250 to junction U.S. Hwy 360 at Richmond, then east along U.S. Hwy 360 to the Chesapeake Bay. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E482), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Westmoreland County, PA, on the one hand, and, on the other, points in VA on and south of a line beginning on U.S. Hwy 250 at the WV-VA State line, then southeast to junction U.S. Hwy 360 at Richmond, then east along U.S. Hwy 360 to the Chesapeake Bay. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E483), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Washington County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E484), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Erie County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E485), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Crawford County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateways eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E486), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Beaver County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E487), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Lawrence County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E488), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Mercer County, PA, on the one hand, and, on the other, points in VA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E489), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Fayette County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E490), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Washington County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E491), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Allegheny County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E492), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels,*

conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils, between points in Butler County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E493), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Erie County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E494), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Crawford County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E495), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Mercer County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E496), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Lawrence County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E497), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Beaver County, PA, on the one hand, and, on the other, points in MD. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E498), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Fayette County, PA, on the one hand, and, on the other, points in DC. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E499), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Washington County, PA, on the one hand, and, on the other, points in DC. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E500), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Allegheny County, PA, on the one hand, and, on the other, points in DC. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E502), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Butler County, PA, on the one hand, and, on the other, points in DC. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E503), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Erie County, PA, on the one hand, and, on the other, points in DC. "Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980." (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E504), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Crawford County, PA, on the one hand, and on the other, points in DC. "Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980." (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E505), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels,*

conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils, between points in Mercer County, PA, on the one hand, and, on the other, points in DC. "Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980." (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E506), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Lawrence County, PA, on the one hand, and, on the other, points in DC. "Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980." (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E507), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Beaver County, PA, on the one hand, and, on the other, points in DC. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E508), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Fayette County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E509), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Washington County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E510), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils,* between points in Allegheny County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E511), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Butler County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties, PA. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E512), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Beaver County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties, PA. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E513), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Lawrence County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties, PA. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV, and 50 miles within Clarksburg, WV.)

MC 112304 (Sub-E514), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* between points in Mercer County, PA, on the one hand, and, on the other, points in Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties, PA. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV.)

MC 112304 (Sub-E515), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in NY to points in MN. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E516), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in NY to points in WI. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E520), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223.

Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in PA on and west of U.S. Hwy 15 to all points in MS. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E521), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in PA on and west of U.S. Hwy 15 to all points in LA. Limitation: The certificate in MC 112304 (Sub-65), shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)"

MC 112304 (Sub-E522), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in PA on and west of U.S. Hwy 15 to all points in AR. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E524), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in NJ to points in MI. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E525), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils,* from points in the Lower Peninsula of MI on and east of a line beginning at the U.S. Hwy 127 at the MI-OH State line, and extending north to junction U.S. Hwy 27 at Lansing, then north along U.S. Hwy 27 to junction Interstate Hwy 75, then north along Interstate Hwy 75 to the Mackinaw Bridge to points in TN. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Oakland and Wayne Counties, MI.)

MC 112304 (Sub-E527), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter and La Porte Counties, IN to points in AR. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E528), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter, and La Porte Counties, IN, to points in LA. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E529), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter, and La Porte Counties, IN, to points in MS. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E530), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter, and La Porte Counties, IN, to points in AL. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E531), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter, and La Porte Counties, IN, to points in GA. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E532), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter, and La Porte Counties, IN, to points in FL. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E533), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in Lake, Porter, and La Porte Counties, IN, to points in TN. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Evansville, IN.)

MC 112304 (Sub-E534), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in ME. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E535), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in NH. Limitation: The certificate in MC 112304 Sub-65, shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E536), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in VT. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E537), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in MA. Limitation: The certificate in

MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E538), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in CT. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E539), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in RI. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E540), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in NY. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E541), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in NJ. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E542), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in PA east of U.S. Hwy 15. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E543), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in DC. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 112304 (Sub-E544), filed May 1, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts,* from points in MI to points in DE. Limitation: The certificate in MC 112304 Sub-65 shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Lima, OH.)

MC 113908 (Sub-E419), filed December 5, 1974. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180, Glenstone Station, Springfield, MO 65804. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. *Vinegar and vinegar stock,* in bulk, in tank vehicles, (1) from points in WA on and east and south of a line beginning at the International Boundary line between United States and Canada, and extending south along Interstate Hwy 5 to junction U.S. Hwy 90, then east along U.S. Hwy 90 to junction WA Hwy 283, then along WA Hwy 283 to junction WA Hwy 17, then north and west along WA Hwy 17 to the International Boundary line between the United States and Canada, to points in DE, MD, NY, PA and those points in OH on, north and west of a line beginning at the OH-KY State line, and extending along U.S. Hwy 68 to junction U.S. Hwy 33, then north along U.S. Hwy 33 to junction OH Hwy 29, then west along OH Hwy 29 to the OH-IN State line, to those points in KY on and east of a line beginning at the KY-WV State line, and extending along Interstate Hwy 64, then along Interstate Hwy 64 to junction U.S. Hwy 23, then south along U.S. Hwy 23 to junction KY Hwy, 80, then along U.S. Hwy 80 to junction Interstate Hwy 75, then south along Interstate Hwy 75 to Junction with the KY-TN State line. (2) from points in WA on and north and east of line beginning at the International Boundary line between the United States and Canada and extending along U.S. Hwy 97 to junction WA Hwy 17, then along WA Hwy 17 to junction WA Hwy 174, then along WA Hwy 174 to junction U.S. Hwy 2, then along U.S. Hwy 2 to the WA-ID State line, to points in DE, MD, NY, PA and those points in OH on, north and east of a line beginning at the PA-OH State line, and extending along U.S. Hwy 224 to junction OH Hwy 58, then north along OH Hwy 58 to Lake Erie. (3) from points in WA on and west of a line beginning at the International Boundary line at the United States and Canada, and extending along WA Hwy 9 to junction WA Hwy 522, then along WA Hwy 522 to junction Interstate Hwy 5, then along Interstate Hwy 5 to junction WA Hwy 7, then along WA Hwy 7 to junction U.S. Hwy 12, then west along U.S. Hwy 12 to junction Interstate Hwy 5, then south along Interstate Hwy 5 to Carrolls, WA, at or near the WA-OR State line, to points in DE, MD, OH, NY, PA and those points in TN on and east of U.S. Hwy 27, points in KY on and east of a line beginning at the KY-WV State line, and extending along U.S. Hwy 23 to junction KY Hwy 80, then along KY Hwy 80 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the KY-VA State line. (4) from points in WA on and south and east of a line beginning at the WA-OR State line, and extending along U.S. Hwy 395 to junction WA Hwy 26, then along WA Hwy 26 to junction WA Hwy 127, then along WA Hwy 127 to junction WA Hwy 272, then along WA Hwy 272 to the WA-ID State line, to points in DE, MD, NY and PA, and those points in KY on and east of a line beginning at the KY-WV State line, and extending along U.S. Hwy 23 to junction KY Hwy 80, then along KY Hwy 80 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the KY-VA State line, those points in OH on, north and west of a line beginning at the OH-KY State line, and extending along U.S. Hwy 68 to junction U.S. Hwy 33, then north along U.S. Hwy 33 to junction OH Hwy 29, then west along OH Hwy 29 to the OH-IN State line, and those points in TN on and east of U.S. Hwy 27. (Gateways eliminated: Kansas City, MO and Belding, MI.)

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-22238 Filed 8-8-78; 8:45 am]

[7035-01]

[Ex Parte No. MC-43]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

Decided: July 17, 1978.

Crete Carrier Corp., (MC 126118 and MC 128375) and Shaffer Trucking, Inc. (MC 114569), under common control have filed a petition for waiver of paragraphs (a)(6 and (b) of § 1057.4 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057).

Findings: 1. Although petitioners are commonly controlled, they are separate entities and each has its own responsibility to the public.

2. The above paragraphs provide protection to the public by insuring that carriers who augment equipment

take affirmative control over that equipment.

3. Waiver of the above paragraphs would unduly reduce petitioners' ability to control and assume responsibility when equipment is in their respective service.

It is ordered: 1. Waiver of paragraphs (a)(6) and (b) is denied.

By the Commission, Motor Carrier Leasing Board, Board Members Joel E. Burns, Robert S. Turkington and W. F. Sibbald, Jr.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-22231 Filed 8-8-78; 8:45 am]

[7035-01]

[Rev. I.C.C. Order No. 65; Rev. S.O. No. 1252]

JOHN E. BURNS, ET AL.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, CP Rail and Detroit, Toledo & Ironton Railroad Co. (DT&I) are unable to transport promptly traffic requiring movement between Detroit, Michigan, and Windsor, Ontario, via the car ferry operated by the Norfolk and Western Railway Company (NW) and used by CP Rail and DT&I, because of a strike or employees of NW.

It is ordered, (a) CP Rail and DT&I being unable to transport traffic requiring movement between Detroit, Michigan, and Windsor, Ontario, via the car ferry operated by the NW and used by CP Rail and DT&I, because of a strike of employees of NW, CP Rail and DT&I are authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:55 a.m., July 26, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m, August 4, 1978, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 26, 1978.

INTERSTATE COMMERCE COMMISSION.
JOEL E. BURNS,
Agent.

[FR Doc. 78-22235 Filed 8-8-78; 8:45 am]

[7035-01]

[I.C.C. Order No. 9, Amdt. 4; Rev. S.O. No. 1252]

MIDDLETOWN AND HUMMELSTOWN RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 9 (Middletown and Hummelstown Railroad Co.) and good cause appearing therefor:

It is ordered, I.C.C. Order No. 9 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 27, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-22233 Filed 8-8-78; 8:45 am]

[7035-01]

[I.C.C. Order No. 2, Amdt. 4, Rev. S. O. No. 1252]

NEW YORK, AND SUSQUEHANNA & WESTERN RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 2 (New York, and Susquehanna and Western Railroad Company) and good cause appearing therefor:

It is ordered, I.C.C. Order No. 2 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 26, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-22234 Filed 8-8-78; 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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[6730-01]

1

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 34575, August 4, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: August 9, 1978, 10 a.m.

CHANGES IN THE MEETING: Deletion of the following item:

2. Matson Navigation Co., 2½ percent general rate increase in the U.S. West Coast/Hawaii trade.

[S-1615-78 Filed 8-7-78; 3:54 pm]

[7030-01]

2

INDIAN CLAIMS COMMISSION.

TIME AND DATE: 10:15 a.m., August 16, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open to the public.

Docket 13-E, *James Strong, et al.*
Docket 15-D, *Pottawatomie.*
Docket 295-A, *Majove.*
Docket 332-C, *Yankton Sioux.*
Docket 355, *Pueblo of Santo Domingo.*

FOR MORE INFORMATION:

David H. Bigelow, Executive Director, Room 640, 1730 K Street NW., Washington, D.C. 20006, telephone 202-653-6174.

[S-1608-78 Filed 8-7-78; 11:43 am]

[7715-01]

3

POSTAL RATE COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, August 16, 1978.

PLACE: Comission Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Budget for fiscal year 1979.

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, telephone 202-254-5614.

[S-1609-78 Filed 8-7-78; 11:43 am]

[6351-01]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., August 8, 1978.

PLACE: 2033 K Street NW., Washington, D.C., Eighth Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1613-78 Filed 8-7-78; 3:23 pm]

[6714-01]

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:50 p.m. on Friday, August 4, 1978, the Federal Deposit Insurance Corporation's Board of Directors met in closed session, by telephone conference call, to issue a temporary cease-and-desist order against an insured State nonmember bank.

In calling the meeting, the Board determined, on motion of Chairman George A. LeMaistre, seconded by Director William M. Isaac (Appointive), that Corporation business required action on the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; and that the matter was appropriate for consideration in a closed Meeting, pursuant to subsections (c)(6(, (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)), since the public interest did not require consideration of the matter in a meeting open to public observation.

Dated: August 4, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION
ALAN R. MILLER,
Executive Secretary.

[S-1611-78 Filed 8-7-78; 3:23 pm]

[6720-01]

6

FEDERAL HOME LOAN BANK BOARD.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 151, page 34574, Friday, August 4, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., August 9, 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.

CHANGES IN THE MEETING: The following item has been added to the agenda for the open meeting:

Consideration of Federal Home Loan Bank Dividend Policy.

No. 172, August 7, 1978.

[S-1612-78 Filed 8-7-78; 3:23 pm]

[7590-01]

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, August 9, 1978.

PLACE: Chairman's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1:p.m.: Discussion of Motion in Seabrook Adjudication (approx. 2 hrs) (Closed—Exemption 10) (Tentative).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ADDITIONAL INFORMATION: At the beginning of the scheduled meeting, the Commission will be asked to vote to hold this meeting on less than one week's notice, and to vote to close the meeting under Exemption 10 (adjudicatory information).

WALTER MAGEE
Office of the Secretary.

AUGUST 4, 1978.

[S-1610-78 Filed 8-7-78; 3:23 pm]

[6320-01]

8

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 2:00 p.m., August 17, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Dockets 33112 and 33136, TXI-National Acquisition Case and North Central-Southern Merger Case.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This meeting will concern the discussion of three issues involved in these acquisition and merger cases. First, the Board will discuss the Bureau of Consumer Protection's request that the Board consider whether or not there are reasonable grounds for docketing an enforcement complaint that TXI has violated provisions of federal law or regulation within the Board's jurisdiction. Second, the Board will discuss TXI's announced intention of acquiring up to 25 percent of National's voting securities and placing them in a voting trust for the pendency of its control application. Finally, the Board will discuss the question of how to proceed with both applications for approval. The meeting will be likely to involve disclosure of investigatory information compiled for law enforcement purposes. Public observation of the discussion might result in premature disclosure of the Board's enforcement plans and strategies which could lead to activity which would interfere with the Board's enforcement and other regulatory responsibilities. Finally, the discussion will involve how the agency should proceed with formal cases of agency adjudication. Public observation of the discussion could lead to premature disclosure of agency strategy resulting in activity which would impede the agency's disposition of these matters. Accordingly, the following Members have voted that this meeting will involve a discussion of investigatory records compiled for law enforcement purposes the disclosure of which would interfere with enforcement proceedings, disclose information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action and specifically concern the initiation, conduct or disposition by the agency of a particular case of formal agency adjudications within the meaning of the Exemptions provided by 5 U.S.C. 552b(c) (7)(A), 9(B) and 10 and 14 CFR § 310b.5(7) (A), 9(B) and (10) and that the meeting may be closed to public observation.

Chairman Alfred E. Kahn
Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia (by telephone to the Secretary)
Member Elizabeth E. Bailey (by telephone to the Secretary)

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Alfred E. Kahn; Vice Chairman, G. Joseph Minetti; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey.
Assistant to Board Members.—Mr. Mike Roach, Mr. James, Mr. Elias Rodriguez, Mr. David M. Kirstein.
Office of the Managing Director.—Mr. Dennis Rapp, Mr. John Hancock.
Office of the General Counsel.—Mr. Phil Bakes, Mr. Gary Edles, Mr. Dan Campbell, Ms. Mary Allendorfer.
Bureau of Consumer Protection.—Mr. Rueben Robertson, Mr. John Golden, Ms. Mary Downs.
Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara Clark, Mr. Paul Gretch, Mr. Steven Carrier, Mr. Bruce Levine, Mr. Sandy Rederer, Mr. Richard Hirst, Mr. Alexander Millard.
Bureau of International Affairs.—Mr. Donaly Farmer.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c) (7)(A), 9(B) and 10 and 14 CFR § 310b.5(7)(A), 9(B) and (10) and that the meeting may be closed to public observation.

PHILIP J. BAKES, Jr.,
General Counsel.

[S-1614-78 Filed 8-7-78; 3:23 pm]

Federal Register

WEDNESDAY, AUGUST 9, 1978
PART II



DEPARTMENT OF STATE

■

APPLICATIONS FOR PERMITS TO FISH OFF THE COASTS OF THE UNITED STATES

Fishery Conservation and Management Act of 1976

[4710-09]

[PUBLIC NOTICE 620]

DEPARTMENT OF STATE

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Applications for fishing during 1978 have been received from the Governments of France and Japan, and are published herewith.

Dated: July 26, 1978.

JAMES A. STORER,
Director, Office of Fisheries Affairs.

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of FRANCE hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1978.

Fishing Vessel Identification Forms will be submitted in support of this application. The fishery plans, species, and catch contemplated for vessels of the FRENCH FLAG flag are as follows:

Fishery Plans	Target Species	Total Tonnage Requested For Each Species (MT)
NORTHWEST ATLANTIC FISHERY	SHORT FINNED SQUID	1,000

Submitted: 18.7.1978
Date

Signature of Authorized Official

COUNSELOR, EMBASSY of FRANCE
Title

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. FR-78-0003

1. Name of Vessel ISLANDE IV
2. Visual Identifier (Call Sign) F N J Q
3. Type of Vessel STERN-TRAWLER
4. Length 86,850 m
5. Gross Tonnage 1498,17
6. Net Tonnage 668,15
7. Maximum Speed (knots) 15,5
8. Owner's Name and Address SOCIETE NOUVELLE DE PECHES LOINTAINES
8, rue Corneille 33300 BORDEAUX
9. Types of Processing Equipment Flash Freezer, fish meal plant, fish oil plant, filleter, header, eviscerator.
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
SQU	Atlantic Squid	Bottom trawl	x	x	
	Short-Finned Squid (Illex)	Mid water trawl	x	x	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-78-1275

1. Name of Vessel NADAYOSHI MARU NO. 20
2. Vessel Identifier (Call Sign) JFHJ
3. Type of Vessel Longliner
4. Length 47
5. Gross Tonnage 345
6. Net Tonnage 180
7. Maximum Speed (knots) 12
8. Owner's Name and Address TOKAI GYOGYO CO.,LTD
1-5-5 MISAKI MIURA-SHI KANAGAWA-KEN
9. Types of Processing Equipment Flash Freezer
10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. FR-78-0004

1. Name of Vessel "N E V E"
2. Visual Identifier (Call sign) F.N.T.U.
3. Type of Vessel Stern Trawler
4. Length 85,25 m.
5. Gross Tonnage I.598 tnx.
6. Net Tonnage = 631 tx
7. Maximum Speed (knots) I3 Nds
8. Owners Name and Address: S.A. "NORMANDIE PECHE" 58, Avenue P. Berthelot – 14000 CAEN (France)
9. Types of Processing Equipment: 2 horizontal flash freezer
4 vertical flash freezer
(x) 3 filletering maschine
(x) 6 eviscerating maschine
(x) I fish meal plant maschine
(x) These maschines are on board vessel but will not be used for this kind of fishing work.
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
S Q U	Atlantic Squid	Bottom-Trawl			
	77 tonnes	Mid-Water Trawl	X	X	
	Short-Finned Squid (Illex)				

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, location and specific activities requested)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-78-1276

1. Name of Vessel KYOEI MARU NO. 3
2. Vessel Identifier (Call Sign) JJEL
3. Type of Vessel Longliner
4. Length 48
5. Gross Tonnage 285
6. Net Tonnage 141
7. Maximum Speed (knots) 13.46
8. Owner's Name and Address KYOEI SUISAN CO., LTD
5012 MUROTOMISAKI-CHO MUROTO-SHI KOCHI-KEN
9. Types of Processing Equipment Flash Freezer
10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-7B-1277

1. Name of Vessel YASU MARU NO. 8 2. Vessel Identifier (Call Sign) JPLS
3. Type of Vessel Longliner 4. Length 49 Maximum
5. Gross Tonnage 299 6. Net Tonnage 151 7. Speed (knots) 11.5
8. Owner's Name and Address HAJIME YASUOKA
2790 MUROTSU MUROTO-SHI KOCHI-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-7B-1278

1. Name of Vessel TAKE MARU NO. 31 2. Vessel Identifier (Call Sign) JMKP
3. Type of Vessel Longliner 4. Length 48 M Maximum
5. Gross Tonnage 299 6. Net Tonnage 152 7. Speed (knots) 13.02
8. Owner's Name and Address HARUJI OKI
500 UKITSU MUROTO-SHI KOCHI-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-7B-1279

1. Name of Vessel MASA MARU NO. 18 2. Vessel Identifier (Call Sign) JJHC
3. Type of Vessel Longliner 4. Length 51 M Maximum
5. Gross Tonnage 300 6. Net Tonnage 155 7. Speed (knots) 12.63
8. Owner's Name and Address TAKEI GYOGYO CO., LTD
452 UKITSU MUROTO-SHI KOCHI-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-7B-1280

1. Name of Vessel NAKA MARU NO. 38 2. Vessel Identifier (Call Sign) JRSK
3. Type of Vessel Longliner 4. Length 44 Maximum
5. Gross Tonnage 299 6. Net Tonnage 155 7. Speed (knots) 10.8
8. Owner's Name and Address NAKAMARU GYOGYO CO., LTD
2-9-2 CHUO-MACHI NAKAMINATO-SHI IBARAGI-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-78-1281

1. Name of Vessel SEISYU MARU NO. 17 2. Vessel Identifier (Call Sign) JNMO
3. Type of Vessel Longliner 4. Length 51 m (Maximum)
5. Gross Tonnage 373 6. Net Tonnage 197 7. Speed (knots) 11
8. Owner's Name and Address YOSUKE KAWAGUCHI
3375-1 TASOURA NANSEI-CHO WATARAI-GUN MIE-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-78-1283

1. Name of Vessel DAITO MARU NO. 28 2. Vessel Identifier (Call Sign) JQSW
3. Type of Vessel Longliner 4. Length 46.45 M (Maximum)
5. Gross Tonnage 344 6. Net Tonnage 179 7. Speed (knots) 11.5
8. Owner's Name and Address DAITO ENYO GYOGYO CO., LTD
4-22-6 TSUKIJI CHUO-KU TOKYO
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-78-1282

1. Name of Vessel TAIYO MARU NO. 55 2. Vessel Identifier (Call Sign) JNRO
3. Type of Vessel Longliner 4. Length 44 M (Maximum)
5. Gross Tonnage 285 6. Net Tonnage 131 7. Speed (knots) 11.4
8. Owner's Name and Address TAKIGUCHI GYOGYO CO., LTD
16 KITAHAMA DOORI YAIZU-SHI SHIZUOKA-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) NO. JA-78-1284

1. Name of Vessel KATSUEI MARU NO. 18 2. Vessel Identifier (Call Sign) JRVB
3. Type of Vessel Longliner 4. Length 44 M (Maximum)
5. Gross Tonnage 299 6. Net Tonnage 155 7. Speed (knots) 12
8. Owner's Name and Address HANEDA SUISAN CO., LTD
172-5 URAWA-CHO KUSHIKINO-SHI KAGOSHIMA-KEN
9. Types of Processing Equipment Flash Freezer

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
ABS		Pelagic longline	X		
		Pelagic Longline	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

[FR Doc. 78-22121 Filed 8-8-78; 8:45 am]

Federal Register

WEDNESDAY, AUGUST 9, 1978
PART III



CONSUMER PRODUCT SAFETY COMMISSION

■

INVESTIGATIONS, INSPECTIONS, AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Proposed Nonadjudicative Rules of Procedure

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1118]

INVESTIGATIONS, INSPECTIONS, AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Proposed Nonadjudicative Rules of Procedure

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: In this document, the Commission is proposing rules to govern the scope and conduct of investigations, inspections, and inquiries under the Consumer Product Safety Act, as well as procedures for disposing of matters by consent order agreements. The proposed rules are intended to provide the Commission with an effective and efficient method of conducting investigations, inspections, and inquiries and to inform the public about the Commission's procedures and the safeguards available during such activities.

DATES: Comments concerning these proposed rules should be received by September 22, 1978. Comments received after the expiration of the comment period will be considered to the extent practicable. The Commission proposes that these rules become effective immediately upon their publication in final form in the FEDERAL REGISTER.

ADDRESSES: Written comments, preferably in five (5) copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. All material which the Commisssion has that is relevant to the proposed rules may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Ronald G. Yelenik, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207, 301-492-6629.

SUPPLEMENTARY INFORMATION: The Commission is proposing these rules in order to provide uniform procedures to govern the conduct and scope of investigations, inspections, and inquiries to determine whether there has been compliance with the Consumer Product Safety Act (15 U.S.C. 2051, et seq.) (the "Act") and the standards, rules, and regulations issued under the Act. The rules set forth the manner in which duly designated officers or employees of the Commission are authorized to enter and inspect premises, to have access to and copy documentary evidence, and to obtain information for the purposes set forth in § 1118.1(a). The following compulsory processes to obtain information are provided for: Subpenas; investigational hearings; depositions; written interrogatories; and general or special orders.The proposed rules also describe the rights of witnesses and describe the procedure for motions to limit or quash the subpenas and general and special orders listed in the preceding sentence.

On November 30, 1977, the Commission issued its final procedures for investigations, inspections, and inquiries under the Flammable Fabrics Act, 16 CFR Part 1605 (42 FR 61020). Many of the provisions of these proposed rules are similar to the Flammable Fabrics Act rules and reflect the public comments submitted during the comment period for those rules. The Commission discussed the major comments in the preamble to the final Flammable Fabrics Act rules. Persons interested in commenting on these proposes Consumer Product Safety Act rules may wish to read the comments submitted on the Flammable Fabrics Act rules. The comments may be examined in the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C. 20207.

Because these are procedural rules, the provisions of the Administrative Procedure Act regarding public comment and publication of a rule 30 days before its effective date do not apply. However, the Commission has decided to solicit public comment on these rules for 45 days in order to have the benefit of diverse views before issuing final rules.

The Commission believes it is important that these rules take effect as soon as possible to facilitate more efficient and effective investigations, inspections, and inquiries under the Consumer Product Safety Act. Therefore the Commission is proposing that they become effective immediately upon publication in final form.

Accordingly, pursuant to the provisions of the Consumer Product Safety Act (sections 5, 16, 19, and 27), Pub. L. 92-573, 86 Stat. 1211, 1224, and 1227, as amended by Pub. L. 94-284, 90 Stat. 509, the Commission proposes to add a new Part 1118 to title 16 as follows:

PART 1118—INVESTIGATIONS, INSPECTIONS, AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Procedures for Investigations, Inspections, and Inquiries

Sec.

1118.1 Definitions, initiation of inspections, and delegations.
1118.2 Conduct and scope of inspections.
1118.3 Compulsory processes and the service thereof.
1118.4 Subpenas.
1118.5 Investigational hearings.
1118.6 Depositions.
1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.
1118.8 Written interrogatories.
1118.9 General or special orders seeking information.
1118.10 Motions to limit or quash subpenas and general or special orders and delegation to modify terms for compliance.
1118.11 Remedies for failure to comply with compulsory processes.
1118.12 Nonexclusive delegation of power.

Subpart B—Consent Order Agreements

1118.20 Procedures for consent order agreements.

AUTHORITY: Sec. 5, Pub. L. 92-573, 86 Stat. 1211 (15 U.S.C. 2054); Sec. 16, Pub. L. 92-573, 86 Stat. 1222 (15 U.S.C. 2065);Sec. 19, Pub. L. 92-573, 86 Stat. 1224 (15 U.S.C. 2068); Sec. 27, Pub. L. 92-573, 86 Stat. 1227 (15 U.S.C. 2076); as amended by Pub. L. 94-284, 90 Stat. 509.

Subpart A—Procedures for Investigations, Inspections, and Inquiries

§ 1118.1 Definitions, initiation of inspections, and delegations.

(a) *Definitions.* For the purpose of these rules, the following definitions apply:

(1) An "investigation" under these rules is an undertaking by the Commission to obtain information for implementing, enforcing, or determining compliance with the consumer Product Safety Act (15 U.S.C. 2051, et seq.) and the regulations, rules, and orders issued under that act. The term investigation includes, but is not limited to, inspections (§ 1118.2), investigational hearings (§ 1118.5), and inquiries, employing subpenas (§ 1118.4), depositions (§ 1118.6), written interrogatories (§ 1118.8), and general or special orders (§ 1118.9).

(2) The term "firm" means a manufacturer, private labeler, distributor, or retailer of a consumer product.

(3) The term "Commission" means the Consumer Product Safety Commission.

(4) The term "Act" means the Consumer Product Safety Act (15 U.S.C. 2051, et seq.)

(5) The definition of the terms set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1118.

(b) *Initiation of inspections.* An inspection as described in § 1118.2 is initiated when the Commission or its delegate authorizes the issuance of a written notice of inspection, described in § 1118.2(c). Investigations and inquiries will be initiated by the Commission in such manner as it deems proper.

(c) *Delegations of authority.* The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solici-

tor; the Directors of the Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the directors of area offices, the power to initiate inspections in the same manner as the Commission.

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in § 1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter, notice). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in § 1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, or establishment where consumer products are manufactured, held, or transported and which may relate to the safety of those products; and

(3) To have access to and copy, all records, books documents, papers, packaging, or labeling (i) required by the Commission to be established, made or maintained; or (ii) showing or relating to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product; or (iii) that are relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules, and orders promulgated under the Act; and

(4) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing distribution, sale, transportation, importation, or receipt of any consumer product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm; (ii) samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling; and (iii) information, both oral and written, concerning any matter referred to in the Act and these rules.

(b) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the course of the same inspection. Each inspection shall be commenced at and completed within a reasonable period of time.

(c) The notice of inspection shall include: the name and address of the person or firm being inspected; the name and title of the Commission officer or employee; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to access is based; pertinent extracts from § 1118.2 of these rules setting forth the authority of Commission officers or employees and the types of information and items they are authorized to obtain; a statement which sets forth the purposes of the inspection and the nature of the information and items to be obtained and/or copied; and a statement that those from whom information is requested should state in writing whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be entitled to exemption from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10496, February 22, 1977) or as amended. Any statement asserting this claim of confidentiality must be in writing, and any request for exemption of the information from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended.

(d) If upon being presented with a notice by an officer or employee duly designated by the Commission, the person or agent-in-charge of the firm being inspected fails or refuses to allow entry or inspection, to provide information, to allow access to or the copying of records, or to provide samples as provided in these rules, the officer or employee shall leave the premises, and the Commission shall take any appropriate action, including but not limited to, seeking an ex parte search warrant and/or taking other suitable administrative or legal action. If the person or agent in charge refuses to accept the notice upon its presentation, the officer or employee shall affix the notice to a public entrance way on the premises, and this shall constitute presentation of the notice.

§ 1118.3 Compulsory processes and the service thereof.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect to seek an ex parte search warrant or use any other reasonable means to initiate investigations, inspections, or inquiries to obtain information for the purposes set forth in § 1118.1(a), including but not limited to:

(1) Subpenas;

(2) Investigational hearings;

(3) Depositions;

(4) Written interrogatories; and

(5) General or special orders.

(b) Service of notice in connection with any of the compulsory processes in § 1118.3(a) shall be done:

(1) By personal service upon the person or agent-in-charge of the firm being investigated, inspected or inquired of; or

(2) By mail (registered or certified) or delivery to the last known residence or business address of anyone being investigated, inspected or inquired of; or

(3) In the case of general or special orders where personal service, mailing or delivery is impractical or has been unsuccessful, service may also be effected by publication in the FEDERAL REGISTER.

(c) The date of service of any form of compulsory process shall be the date on which the document is mailed, delivered in person or published in the FEDERAL REGISTER. Whenever a party is required or permitted to act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period. In computing a period of time, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) These rules shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Anyone submitting information in response to any of the compulsory processes referred to in § 1118.3(a) should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be exempt from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended. Any claim of confidentiality must be in writing, and any request for exemption from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended.

§ 1118.4 Subpenas.

The Commission may issue to any person or firm a subpena requiring the production of documentary evidence (subpena duces tecum) and/or attendance and testimony of witnesses (subpena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpenas and motions to limit or quash subpenas are provided for in § 1118.10.

§ 1118.5 Investigational hearings.

(a) The Commission may order, and, by subpena, may compel any person or firm to provide information at an investigational hearing. These hearings shall be for the purpose of taking the testimony, under oath, of witnesses and receiving documents and other data relating to any subject under investigation. The hearings shall be presided over by the Commission, by one or more of its members, by an administrative law judge, or by a duly designated officer or employee, who shall be referred to as the presiding official. The hearings shall be stenographically reported, and the transcript shall be made a part of the record.

(b) A Commissioner who participates in a hearing or other investigation, inspection, or inquiry shall not be disqualified by reason of that participation from subsequently sharing in a Commission decision in the same matter.

(c) All investigational hearings shall be closed to the public, unless otherwise ordered by the Commission.

(d) The release of the record of the hearing shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations.

§ 1118.6 Depositions.

(a) The Commission may order and, by subpena, may compel testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person designated by the Commission who has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Commission. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations.

(b) Any changes in form or substance which the deponent desires to make shall be entered in a separate document accompanying the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. If the deponent does not sign the deposition within 30 days of its submission to him or her, or such shorter time as the Commission may designate, the Commission designee shall sign it and state on the record the fact of the waiver of the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign together with the reason, if any, given therefor. The deposition may be used in any administrative or judicial adjudicative proceeding.

§ 1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.

(a) Any person or agent or officer of a firm who is required to produce documentary evidence or give testimony as a witness at an investigational hearing conducted under provisions of § 1118.5 or as a deponent at a deposition taken under provisions of § 1118.6 may be accompanied by an attorney or an official or employee of the person, or firm, who may act as counsel for the witness or the deponent. However, a person who is subpenaed to produce documentary evidence or give testimony at an investigational hearing or deposition cannot act as counsel for another witness or deponent at the same proceeding. The term attorney refers to members of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. The witness or deponent and his or her cousel may act as follows during the course of an investigational hearing or deposition:

(1) A witness or deponent may confer, in confidence, with his or her counsel concerning any questions asked of the witness or deponent. If the witness or deponent or counsel objects to a question, the objection and basis thereof shall be stated on the record. In the case of an objection based upon self-incrimination, the privilege must be asserted by the witness or deponent. If a witness at an investigational hearing refuses to answer a question or provide other information, the presiding official shall have the authority to immediately order the witness to answer the question or provide the information requested, except in circumstances where an immediate ruling would be unwarranted and except where a refusal is based upon the privilege against self-incrimination. Otherwise all objections shall be ruled upon by presiding official at the time the objection is made.

(2) Objections timely made under the provisions of § 1118.7(a) shall be noted on the record, shall be treated as continuing, and shall be preserved throughout the proceeding without the necessity of repetition during similar lines of inquiry.

(3) Except as provided by § 1118.7(a), counsel for a witness or a deponent may not interrupt the examination of the witness or the deponent by making objections or statements on the record.

(4) Upon completion of the examination, the witness or deponent may clarify on the record any of his or her answers, or if the witness or deponent is accompanied by counsel, the counsel may examine the witness or deponent on the record as to answers previously given.

(b) Any person, agent, or officer who is required to appear in person at an investigational hearing or at a deposition shall testify as to matters and information known and/or reasonably available to the person or firm involved.

(c) Any person, agent or officer who is compelled by subpena to appear in person at an investigational hearing or at a deposition shall receive the same fees and mileage allowances as are paid witnesses in the courts of the United States.

(d) Any person, agent, or officer who is required to appear at an investigational hearing or at a deposition shall be entitled to retain a copy of any document submitted by him or her and, upon payment of lawfully prescribed costs, shall be entitled to procure a copy of his or her own testimony as recorded.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained. The presiding official, for reasons stated on the record, shall immediately report to the Commission any instance in which counsel for a witness or a deponent has refused to comply with the presiding official's directions or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing. The Commission shall thereupon take whatever action the circumstances warrant.

§ 1118.8 Written interrogatories.

(a) The Commission may order any person or firm being investigated to answer written interrogatories. These interrogatories shall be answered by

the individual or by any agent or officer of the firm who shall furnish information on behalf fo the firm. The information provided shall be that which is known or reasonably available to the person or organization involved. A reasonable inquiry shall be made in order to obtain the information requested.

(b) Each interrogatory shall be answered separately and fully in writing and under oath, unless it is objected to, in which event the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the individual or the officer or agent making them. The person, or firm upon whom the interrogatories have been served shall furnish the Commission a copy of the answers and objections, if any, within 30 days after service of the interrogatories or within any shorter time the Commission may designate. Interrogatories submitted hereunder are continuing, and require the person, or firm answering to file supplementary answers upon obtaining further or different information.

§ 1118.9 General or special orders seeking information.

The Commission may require by the issance of general or special orders any person or firm to submit in writing any reports and answers to questions as the Commission may prescribe. The reports or answers shall be made under oath, and shall be filed within the time prescribed by the Commission. Procedures regarding compliance with general or special orders and motions to limit or quash such orders are provided for in § 1118.10.

§ 1118.10 Motions to limit or quash subpenas and general or special orders and delegation to modify terms for compliance.

(a) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor; the Directors of Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the general counsel(s) the authority:

(1) to negotiate and approve the terms of satisfactory compliance with subpenas and general or special orders; (2) to impose conditions upon compliance with such compulsory processes; (3) and to extend the time for compliance and the time for filing motions to limit or quash.

(b) The person or firm served with a subpena or general or special order may file a motion to limit or quash the subpena or order. Any motion to limit or quash shall set forth the reasons why the subpena or order should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. The motion must be recieved in the Office of the Secretary of the Commission within 10 calendar days of receipt of the subpena or order unless: (1) The subpena or order provides for a different time; (2) the appropriate staff member and the recipient of the subpena or order have voluntarily agreed to a longer period; or (3) the Commission, for good cause shown, grants an extension of time to file a motion.

(c) Upon receipt of a motion to limit or quash, the Office of the Secretary shall immediately notify and transmit a copy to the appropriate staff member. Unless a different period of time is specified in the subpena or order, the staff shall file an answer with the Office of the Secretary within 10 calendar days after receipt of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving party. No reply to the answer will be permitted.

(d) All motions to limit or quash shall be ruled upon by the Commission. The Office of the Secretary shall serve the decision on a motion to limit or quash upon the moving party or the counsel for the moving party and shall furnish a copy of the decision to the appropriate staff member. The Commission's decision is a final decision. Motions for reconsideration will not be received.

§ 1118.11 Remedies for failure to permit authorized investigations.

In the event a person or firm fails to comply with any investigative process authorized by these rules, the Commission may seek appropriate action within its authority under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.)

§ 1118.12 Nonexclusive delegation of power.

No provision contained herein delegating any of the Commission's powers shall be construed as limiting the actual authority of the Commission to excerise the same powers.

Subpart B—Consent Order Agreements

§ 1118.20 Procedures for consent order agreements.

(a) For the procedure to be followed regarding consent order agreements involving section 15 of the Act (15 U.S.C. 2064), refer to the Commission's regulations relating to substantial product hazards (16 CFR Part 1115). For all other consent order agreements under the Consumer Product Safety Act, the provisions set forth below are applicable.

(b) The consent order agreement is a document executed by a person, or firm (consenting party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved. A consent order agreement shall contain the following provisions, as appropriate:

(1) An admission of all jurisdictional facts by the consenting parties;

(2) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's order;

(3) A statement that the agreement is in settlement of the staff's charges and does not constitute an admission by the consenting party that the law has been violated;

(4) A statement that the Commission's order is issued under the provisions of the Act (15 U.S.C. 2051, et seq.); and that a violation of such order may subject the consenting party to appropriate legal action.

(5) An acknowledgment that the consent order agreement only becomes effective upon its final acceptance by the Commission and its service upon the consenting party;

(6) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public;

(7) A statement that the consenting party shall perform and/or refrain from performing certain acts and practices pursuant to the consent order agreement.

(8) A statement that the requirements of the order are in addition to and not to the exclusion of other remedies under the Act.

(c) At any time in the course of an investigation, the staff, with the approval of the Commission, may propose to the person or firm being investigated that any alleged violation be resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may: (1) Provisionally accept it; (2) reject it and its complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's rules of practice for adjudicative proceedings) (16 CFR part 1025, June 21, 1977) or as amended, and/or (3) take such other action as it may deem appropriate.

(e) If the agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the FEDERAL REGISTER. Any interested person may ask the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Any request must be received in the Office of the Secretary no later than the close

of business of the 15th calendar day following the date of announcement in the FEDERAL REGISTER.

(f) Unless the Commission orders otherwise, the agreement shall be deemed finally accepted by the Commission on the 20th calendar day after the date of announcement in the FEDERAL REGISTER. The Commission shall then issue its complaint and order in the form as the circumstances require. The order is a final order in disposition of the proceeding and is effective immediately upon its service upon the consenting party under these rules. The consenting party shall thereafter by bound by and take immediate action in accordance with the final order.

(g) If the Commission does not accept the agreement on a final basis, it shall so notify the consenting party. This notification constitutes withdrawal of the Commission's provisional acceptance unless the Commission orders otherwise. The Commission may then issue its complaint, may order further investigation, or may take any other action it considers appropriate.

Dated: August 3, 1978.

SHELDON D. BUTTS,

Acting Secretary, Consumer Product Safety Commission.

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federal register

WEDNESDAY, AUGUST 9, 1978
PART IV



SECURITIES AND EXCHANGE COMMISSION

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SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15020; File No. SR-NASD-78-3]

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.

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 14, 1975), notice is hereby given that on May 31, 1978, the National Association of Securities Dealers, Inc. ("NASD") or ("Association") filed with the Securities and Exchange Commission a proposed rule change as follows:

THE NASD'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Text of proposed rule change:

PROPOSED AMENDMENT TO ARTICLE II, SECTION 1 OF THE RULES OF FAIR PRACTICE

Article II, section 1 is proposed to be amended by the addition of a new subsection (m). All other subsections of section 1 remain unchanged. (New material is indicated by italics.)

"Fixed Price Offering"

(m) The term "fixed price offering" means the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not registered under the Securities Act of 1933, except that the term does not include offerings of "exempted securities" or "municipal securities" as those terms are defined in Section 3(a)(12) and 3(a)(29), respectively, of the Securities Exchange Act of 1934 or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act of 1940 which are offered at prices determined by the net asset value of the securities.

PROPOSED AMENDMENT TO ARTICLE III, SECTION 8 OF THE RULES OF FAIR PRACTICE

Article III, section 8 is proposed to be amended by adding the language indicated by italics and by deleting the language bracketed.

Section 8

(a) A member, [when a member of a selling syndicate or a selling group, shall purchase] *engaged in a fixed price offering, who purchases or arranges the purchase of* securities taken in trade *shall purchase the securities* at a fair market price at the time of purchase[,] or shall act as agent in the sale of such securities[.]*and charge a normal commission therefor.*

(b) When used in this section—

(1) the term "taken in trade" means the purchase by a member as principal, or as agent for the account of another, of a security from a customer pursuant to an agreement or understanding that the customer purchase securities from the member which are part of a fixed price offering.

(2) the term "fair market price" means—

a. a price which is not higher than the lowest independent offer for the securities at the time of purchase, if offer quotations for the securiteis are readily available. If such quotations are not readily available, the fair market price may be determined by comparing the security taken in trade with other securities having similar characteristics and of similar quality and for which offer quotations are readily available; or

b. in an exceptional or unusual case, a price higher than the lowest independent offer when all factors relevant to the transaction are taken into consideration, including, among other things, whether a customer of a member has given an indication of interest to purchase the securities taken in trade at a higher price; the member's pattern of trading in the securities or comparable securities at the time of the transaction; the member's position in and the availability of, the securities taken in trade; the size of the transaction; and the amount by which the price paid exceeds the lowest independent offer. In all such cases the burden for demonstrating justification that the higher price was the fair market price shall be on the member.

(3) The term "normal commission" means an amount of commission which the member would normally charge to that customer or a similarly situated customer in transactions having similar characteristics but not involving a security taken in trade.

(c) A member, in determining fair market price pursuant to this section, shall with respect to—

(1) common stocks, which are traded on a national securities exchange or for which quotations are entered in an automated quotation system, obtain the necessary quotation from the national securities exchange or from the automated quotation system; and

(2) other securities and common stocks not included in subparagraph (1) of this subsection (c) obtain directly or with the assistance of an independent agent necessary quotations from two or more independent dealers.

(d) A member who purchases a security taken in trade shall keep or cause to be kept adequate records to demonstrate compliance with this section and shall preserve the records for at least 24 months after the transaction. If an independent agent is used for the purpose of obtaining quotations, the member must request the agent to identify the dealers from whom the quotations were obtained and the time and date they were obtained or request the agent to keep and maintain for at least 24 months a record containing such information.

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INTERPRETATION OF THE BOARD OF GOVERNORS

FAIR MARKET PRICE

A member who, in reliance on subparagraph (b)(2)b of section 8 of this article, pays a price for securities taken in trade which is higher than the lowest independent offer will have a heavy burden to demonstate that the price paid was the fair market price. Subparagraph (b)(2)b lists factors which might be considered relevant to justify paying a price higher than the lowest offer. The existence of only one such factor, however, will not necessarily be sufficient to meet the heavy burden, though in a given case it may be sufficient. In any event, all facts and circumstances must be considered. For example, a member may be able to satisfy the burden of demonstrating that fair market price was paid by showing that the price paid did not exceed the price, less an amount equal to a normal commission on an agency transaction, at which a customer had given the member an indication of interest to purchase the securities, or that the member held a short position in the security purchased, that it desired to cover that short position, that the availability of the security was scarce and that the amount of securities taken in trade could not have been acquired at a lower price.

ADEQUATE RECORDS

If the member purchases securities taken in trade at a price which is no higher than the lowest independent offer as determined according to this section, it will have kept adequate records if it records the time and date quotations were received, the identity of the security to which the quotations pertain, the identity of the dealer from whom, or the exchange or quotation system from which, the quotations were obtained, and the quotations furnished. If a member uses the services of an independent agent to obtain the quotations and the agent does not disclose the identity of the dealers from whom quotations were obtained, the member will have kept adequate records if it otherwise complies with subsection (d) of section 8 hereof and it records the time and date it received the quotations from the agent, the

identity of the agent, and the quotations transmitted by the agent.

If a member, in reliance on subparagraph (b)(2)b of this section, pays more than the lowest independent offer, it will have kept adequate records if, in addition to the foregoing records, it keeps records of all relevant factors it considered important in concluding that the price paid for the securities was fair market price.

PROPOSED AMENDMENT TO ARTICLE III, SECTION 24 OF THE RULES OF FAIR PRACTICE

Article III, section 24 is proposed to be amended by adding the language indicated by italics and by deleting the language bracketed.

Section 24

In connection with the sale of securities which are part of a fixed price offering—

(a) [Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed] *a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such concessions, discounts or other allowances* to anyone other than a broker or dealer actually engaged in the investment banking or securities business; provided, however, that nothing in this rule shall prevent any member from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(b) a member who grants a selling concession, discount or other allowance to another person shall obtain a written agreement from that person that he will make a bona fide public offering of such securities and will otherwise comply with the provisions of this section, and a member who grants such selling concession, discount or other allowance to a nonmember broker or dealer in a foreign country shall also obtain from such broker or dealer a written agreement to comply with the provisions of sections 8, 25, and 36 of this article.

(c) a member who receives an order from any person designating another broker or dealer to receive credit for the sale shall, within 30 days after the end of each calendar quarter, file reports with the Association containing the following information with respect to each fixed price offering which terminated during that calendar quarter: the name of the person making the designation; the identity of the brokers or dealers designated; the identity and amount of securities for which each broker or dealer was designated; the date of the commencement and termination of the offering and such other information as the Association shall deem pertinent.

(d) a member who is designated by its customer for the sale of securities shall keep, and maintain for a period of 24 months, records in such form and manner to show the following information: name of customer making the designation; the identity and amount of securities for which the member was designated; the identity of the manager or managers of the offering, if any; the date of the commencement of the offering and such other information as the Association shall deem pertinent.

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INTERPRETATION OF THE BOARD OF GOVERNORS

SERVICES IN DISTRIBUTION

The proper application of section 24 requires that, in connection with fixed price offerings, selling concessions, discounts or other allowances be paid only to brokers or dealers actually engaged in the investment banking or securities business and only as consideration for services rendered in distribution.

A dealer has rendered services in distribution in connection with the sale of securities from a fixed price offering if the dealer is either an underwriter of a portion of that offering or has engaged in some selling effort with respect to the sale. While furnishing a customer with research or other services might aid a dealer in selling particular securities or securities generally to that customer, the furnishing of such research will not by itself constitute sufficient selling effort to satisfy the provisions of section 24. Rather, some direct selling contact on a particular offering will be necessary. Even though the furnishing of research to a customer may aid a dealer in the sale of securities, the furnishing of such research under certain circumstances, as described below, could result in the dealer granting that customer a selling concession, discount or other allowance in violation of section 24.

A broker or dealer who has received or retained a selling concession, discount or other allowance may not grant or otherwise reallow all or part of that concession, discount or allowance to anyone other than a broker or dealer engaged in the investment banking or securities business and only as consideration for services rendered in distribution. The improper grant or reallowance of a selling concession, discount or other allowance might occur directly or indirectly through such devices as transactions in violation of section 8 of this article, or other indirect means as described below.

A member granting a selling concession, discount or other allowance to another person is not responsible for determining whether such other person may be violating section 24 by granting or reallowing that selling concession, discount or other allowance to another person, unless the member knew, or had reasonable cause to know, of the violation.

SELLING CONCESSIONS, DISCOUNTS OR ALLOWANCES

General

A member who, itself or through its affiliate, (i) supplies another person with services or products which are commercially available or are provided by the member or its affiliate to such person or to others for cash or for some other agreed upon consideration, including brokerage commissions, and (ii) also retains or receives selling concessions, discounts or other allowances from purchases by that person or its affiliate of securities from a fixed price offering, is improperly granting a selling concession, discount or other allowance to that person unless the member or its affiliate has been, or has arranged and reasonably expects to be, fully compensated for such services or products from sources other than the selling concession, discount or allowance retained or received on the sale.

Commercially available

As used in this interpretation, a product or service is "commercially available" if it is generally available on a commercial basis. It would include such things as office space, secretarial services, quotation equipment, news periodicals, certain research products or services, airline tickets, and other items which could be purchased directly or indirectly by the recipient from a third party.

The term includes products or services which a person receives from another for redistribution if the same service or product, or a service or product which is substantially an identical service or product, is offered to others on a commercial basis. Thus, a service or product may be commercially available even though the person engaged in redistributing it does not itself make the service or product commercially available.

This interpretation is not intended to prohibit members from providing products or services which are commercially available but which are not of a substantial value. No question arises under Section 24 if a member furnishes such things as incidental business gifts, food, entertainment, or other items not having a substantial value.

Cash or other agreed upon consideration

A person will be deemed to be providing services or products for cash or other agreed upon consideration if the service or product, or a substantially identical service or product, is provided to any person for cash or for some other agreed upon consideration. A service or product will be deemed to be provided for an agreed upon consideration if there is an express or implied agreement between the person providing the service or product and the recipient thereof calling for the provider of the service or product to be compensated therefor with an agreed upon or mutually understood source and general amount of consideration. For example, if a person provides another with a service or product and the recipient thereof agrees or represents, expressly or impliedly, that it will compensate the provider of the service or product with a specified amount of consideration, such as brokerage commissions or a range of brokerage commissions depending on the commission rate charged, or with a general minimum amount of brokerage commissions or other consideration, that service or product will be deemed to be offered for an agreed upon consideration. Thus, under such circumstances a member or its affiliate providing such service or product would be required to demonstrate that it was fully compensated for the service or product with consideration other than selling concessions, discounts or other allowances received or retained on the sale of securities from fixed price offerings.

Full consideration

A member may show that it or its affiliate received or reasonably expects to receive full consideration, independent of selling concessions, discounts or other allowances, for providing certain services and products, by identifying the arrangement for the consideration (including its source and amount) and, if appropriate, the collection process for obtaining it.

In order to demonstrate that the cash, brokerage commissions or other consideration serves as full consideration, records of account should be kept which identify the recipient of the services of products, the amount of cash, brokerage commissions or other consideration paid or to be paid by such person or its affiliate.

Unless the amount of cash, brokerage commissions or other consideration agreed upon appears on its face to be unreasonably low, it will not be necessary for the member or its affiliate to demonstrate that the agreed upon price represented fair market price. Likewise, as long as price differentials are based on factors other than the customer's willingness to, or practice of, purchasing securities from the member out of fixed price offerings, it is not necessary, for purposes of section 24, that the member or its affiliate charge the same amount to each person to whom they provide the same or similar services or products.

PROPOSED NEW SECTION 36 OF ARTICLE III AND INTERPRETATION THEREOF

Article III is proposed to be amended by the addition of a new section 36 and an interpretation thereof. (New material is indicated by italics.)

Section 36

(a) Except as otherwise provided in subsection (d) of this section, no member engaged in a fixed price offering of securities shall sell the securities to, or place the securities with, any person or account which is a related person of the member unless such related person is itself subject to this section or is a non-member foreign broker-dealer who has entered into the agreements required by section 24(b) of this article.

(b) For purposes of this section 36, a "related person" of a member includes any person or account which directly or indirectly owns, is owned by or is under common ownership with the member.

(c) A person owns another person or account for purposes of this section if the person directly or indirectly:

(1) has the right to participate to the extent of more than 25 percent in the profits of the other person; or

(2) owns beneficially more than 25 percent of the outstanding voting securities of the person.

(d) The prohibition contained in subsection (a) does not apply to the sale of securities to, or the placement of securities in, a trading or investment account of a member or a related person of a member after termination of the fixed price offering if the member or the related person of the member has made a bona fide public offering of the securities. A member or a related person of a member is presumed not to have made a bona fide public offering for the purpose of this subsection if the securities being offered immediately trade in the secondary market at a price or prices which are at or above the public offering price.

* * * * *

INTERPRETATION OF THE BOARD OF GOVERNORS

TRANSACTIONS WITH RELATED PERSONS

A member who is acting, or plans to act, as sponsor of a unit investment trust will not violate Section 36 if it accumulates securities with respect to which the member has acted as a syndicate member, selling group member or reallowance dealer in an account of the member or related person of the member if, at the time of accumulation, the member in good faith intends to deposit the securities into the unit investment trust at the public offering price and intends to make a bona fide public offering of the participation units of that trust. Members engaged in such activity, however, will continue to be subject to the Board of Governors' Interpretation of Article III, Section 1 of the Rules of Fair Practice concerning Free-Riding and Withholding.

While subsection (d) of Section 36 provides that a person is presumed not to have made a bona fide public offering if, immediately folowing the termination of the fixed price offering, the securities trade at or above the public offering price, there is no presumption that a person has made a bona fide public offering if, at such time, the securities trade below the public offering price. Whether a person has made a bona fide public offering will be determined on the basis of all relevant facts and circumstances.

THE NASD'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

PURPOSE OF PROPOSED RULE CHANGE

Section 1(m) of Article II of the Rules of Fair Practice

All of the proposals are intended to apply to "fixed price offerings" as proposed to be defined in subsection (m) of section 1 of article II of the Rules of Fair Practice. That definition specifies that included in the term are offerings of securities made at a stated public offering price or prices, all or part of which are publicly offered in the United States, or any territory thereof, except "exempted securities" or "municipal securities" as defined in the Securities Exchange Act of 1934, and certain offerings of redeemable securities of issuers registered as investment companies pursuant to the Investment Company Act of 1940. Wholly foreign offerings are not included within the scope of the definition or within the coverage of the Association's rules concerning fixed price offerings.

Section 8 of Article III and Interpretation Thereof

Section 8 presently requires that, where securities are taken in trade in connection with a sale, either the member purchase the securities taken in trade at a fair market price at the time of purchase or act as agent in their sale. These are known as "swap transactions." If more than the fair

market price is paid, however, the practice is generally referred to as "overtrading."

The Board believes that swap transactions, as distinguished from overtrading, represent a reasonable business practice and are important to the process of distributing securities. Among other things, the practice serves to increase liquidity for institutions who may desire to purchase the securities being distributed but who do not have available sufficient cash to make the acquisition. However, if more than the fair market price is paid for the securities being taken in trade than for the security being distributed pursuant to a fixed price offering, the customer would indirectly be purchasing the security being distributed at a price which is below any stated public offering price and would, therefore, be sharing in the selling concession retained or received by the dealer. Similarly, swap transactions effected as agent where less than a normal commission is charged confer a benefit on the customer, again tantamount to a granting of all or part of the selling concession to the customer. The Board, therefore, proposes an amendment to section 8 which requires that a normal commission be charged in connection with swap transactions effected as agent.

While the Board believes that swapping, as opposed to overtrading, should not be prohibited or even discouraged, it recognizes that the existing overtrading prohibition in section 8 poses at least two problems. First, the efficacy of the section is dependent on the ability to make a determination as to what constitutes "fair market price." This is particularly difficult with respect to securities for which there is no established marketplace or quotation system which provides a ready, reliable source of market quotations. Second, the section does not impose any restriction on the amount of commission to be charged for a swap effected on an agency basis. In light of these problems, the Board proposed that section 8 be amended to clarify what is meant by the terms "fair market price" and "normal commission" and to impose certain recordkeeping obligations to facilitate enforcement of the section.

The proposed amendment in subsection (b) defines "fair market price" as a price which is not higher than the lowest independent offer for the securities at the time of purchase, if offer quotations for the securities are readily available. If such quotations are not readily available, the fair market price may be determined by comparing the security taken in trade with other securities having similar characteristics and of similar quality and for which offer quotations are readily available. The definition is designed to lend some objectivity to the meaning of fair market price, facilitating effective enforcement of section 8. While the Board recognizes that fair market price, particularly for debt securities, is not subject to precise determination, because of the limited purpose to which the definition in section 8 applies and the flexibility afforded by permitting transactions to occur at prices as high as the lowest independent offer, it decided that the proposal should, to the extend possible, build in the objectivity afforded by reliance on quotations.

While the Board believes that quotations are a satisfactory means of determining fair market price for most swap transactions, it has allowed for flexibility in the application of the section by providing that, in an exceptional or unusual case, a member may undertake the burden of demonstrating that a swap transaction effected at a price above the lowest independent offer was appropriate, in view of all factors relevant to the transaction. In such situations, the member will be responsible for maintaining adequate records to substantiate its analysis of fair market price for the traded securities. As stated in the interpretation of section 8, a member will have a heavy burden to demonstrate that the price paid in such a situation was fair market price. The Board believes that the proposal contains the advantages of objectivity yet affords some flexibility to accommodate special circumstances.

The types of factors or special circumstances which are contemplated by the rule are listed in subparagraph (b)(2)b of section 8. They include whether a customer of a member has given an indication of interest to purchase the securities taken in trade at a higher price; the member's pattern of trading in the securities or comparable securities at the time of the transaction; the member's position in and the availability of the securities taken in trade; the size of the transaction and the amount by which the price paid exceeds the lowest independent offer. The interpretation of section 8 also discusses this subject. As stated in the interpretation, the presence of only one such factor or special circumstance may not necessarily be sufficient to meet the heavy burden. However, since all facts and circumstances must be considered, the existence of only one such factor in a given case may be sufficient.

While the above-described revision to section 8 proposed by the Board and the interpretation will afford additional flexibility, it is expected that reliance on special circumstances will occur only in exceptional situations. The Association will carefully review records of all swap transactions with special emphasis on those transactions which occur at prices above the lowest independent offer.

Subsection 8(c) requires that quotations for common stock which are traded on an exchange or quoted in NASDAQ be obtained from the exchange or NASDAQ. Paragraphs (1) and (2) of that subsection make clear that this requirement would be applicable only to common stocks, hence recognizing that trading characteristics of preferred stocks more closely resemble the trading characteristics of debt securities than common stocks. Accordingly, the Board's proposal would not restrict a member, when determining fair market price for debt securities or preferred stocks taken in trade, to quotations obtainable on an exchange or in an automated quotations system. In such cases, and in the case of common stocks where exchange or NASDAQ quotations are not available, quotations shall be obtained from two or more independent dealers. If dealer quotations for the securities taken in trade are not readily available, the member would be permitted to determine fair market price by comparing those securities with securities having similar characteristics and of similar quality for which quotations are readily available. If the member wishes to protect its anonymity, it could use an independent agent to obtain the necessary quotations on its behalf.

As stated above, the Board has proposed the broadening of section 8 of require, in subsection (a), the charging of a normal commission on swap transactions effected on an agency basis. Normal commission would be defined generally as the amount of commission which the member would normally charge to the customer or a similarly situated customer in a transaction having a similar characteristics but not involving a swap transaction. Today, in the era of negotiated commission rates, a member is permitted to effect exchange transactions at any commission rate agreed upon with the customer. It is thus possible to grant an indirect selling concession, discount, or allowance to a customer by agreeing to swap securities for it as agent and charging a lower than normal commission or no commission at all. The proposed amendment to section 8 will remedy this problem.

In order to insure adequate enforcement of section 8, the Board has proposed recordkeeping and record maintenance requirements which will impose an obligation on members to maintain records of all transactions subject to the provisions of section 8. Subsection (d) and the interpretation of section 8 address these requirements. Subsection (d) specifices that

the records must be preserved for at least 24 months.

The interpretation states that adequate records will have been kept if they include the time and date quotations were received, the identity of the security to which the quotations pertain, the identity of the dealer from whom, or the exchange or quotation system from which, the quotations were obtained, and the quotations furnished. The interpretation further specifies that if an independent agent is used to obtain the quotation and the agent does not disclose the identity of the dealers from whom quotations were obtained, adequate records will have been kept if the member requests the agent to identity the dealers from whom the quotations were obtained, and if the member itself records the time and date of receipt of quotations from the agent, the identity of the agent and the quotations transmitted by the agent. The Board recognizes that the recordkeeping and record maintenance requirements impose burdens on members, but it believes the proposed requirements are reasonable and necessary for developing an effective enforcement program.

Section 24 of Article III and Interpretation Thereof

Section 24 presently provides that "selling concessions, discounts or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker or dealer actually engaged in the investment banking or securities business . . . ."

Section 24 serves an important function in promoting fairness, full disclosure, and commercial honor by requiring adherence to the representations customarily made to issuers, underwriters, dealers, and investors in securities distribution made through fixed price offerings. The section serves to assure that the "trade preference", that is the selling concession, discount, or other allowance, be offered only to professionals in the securities industry who render services in the distribution. This restriction is consistent with the expectations of the issuer and the public and with the representations generally made in offering documents. Moreover, the section prohibits not only the direct granting of a concession by selling to customers at the dealers' price (i.e., at the public offering price less some or all of the selling concession, discount, or reallowance) and cash rebates or kickbacks of the concession, but, also, the indirect, surreptitious granting of the concession through credits or other devices to selected investors who are in a position to take advantage of various recapture devices. Hence, the proposals are designed to assure that members who decide to offer securities to the public at a fixed, stated public offering price conduct the offering in a manner which is fair and nondiscriminatory to all investors, which is consistent with the representations made in offering documents and to all parties concerned with the distribution and which is consistent with the reasonable expectations of such parties inherent in the holding out of a distribution as fixed price offering.

The proposals are not intended to alter substantially the present scope and application of section 24. They do, however, clarify that section 24 applies only to the offering of securities by members at a fixed public offering price and that certain forms of indirect concessions are treated no differently than direct concessions. Thus, the interpretation of section 24 makes it very clear that members who agree to offer securities to the public at a stated public offering price cannot devise indirect means to provide select customers with the securities at prices not available to other public investors. The indirect granting of a concession by a device like that contemplated in *Papilsky* has the additional vice of creating a misleading record of the transaction, since the sale is confirmed and recorded at the fixed price while the sharing of the concession—the rebate—is accomplished through other means.

The proposals also serve the purpose of clarifying terms which have been contained in the section since its adoption in 1939. Specifically, the proposal contains an interpretation concerning what constitutes rendering services in distribution.

The proposed modifications to section 24 also impose certain recordkeeping and reporting requirements and require that certain agreements be obtained from others prior to granting such persons a selling concession, discount, or other allowance.

The purpose for the foregoing modifications as described in greater detail, hereinafter, is generally to facilitate enforcement of section 24. The requirement that written contracts be obtained serves to remind members and others of their public obligations when participating in an offering. The reporting and recordkeeping requirements will enable the Association to identify those situations where selling group members may have had little direct involvement in a sale. While such transactions are not the only circumstances under which customers might be receiving an indirect, undisclosed selling concession, discount, or other allowance, the Association believes that such transactions deserve closer scrutiny.

SERVICES IN DISTRIBUTION

The threshold question under section 24 for determining if a selling concession, discount, or other allowance may be paid to another person engaged in the investment banking and securities business is whether that person rendered services in distribution. This subject is discussed extensively in the proposed interpretation of section 24. The proposed interpretation recognizes that there are two types of services which may constitute services in distribution—underwriting services and selling effort.

A person renders a service in distribution to the extent that he underwrites an offering of securities on a firm commitment basis, thereby risking his capital and supplying the issuer with needed cash in the hope of reselling the securities to the public at a profit. In a typical firm commitment, fixed price offering, each underwriter undertakes to buy the securities from the issuer at an agreed price and to make or cause to be made an offering of the securities to the public at the initial public offering price. The difference between the two prices represents underwriters' compensation. Non-managing underwriters each contribute a portion of their compensation to the managers in consideration for, among other things, the manager's efforts in coordinating the distribution.

When the underwriting agreement is signed, which is generally coincident with the effective date of the registration statement, underwriters are bound to purchase and publicly offer the issuer's securities. If the underwriter, directly or with the assistance of others, fails to distribute its commitment at the public offering price, it will be forced to hold the securities and possibly incur a loss. It is the Board's view that these services and the risk assumed by the underwriter constitute distribution services. Because all underwriters render this service in firm commitment underwritings, under section 24 underwriters always should be eligible to receive a selling concession, discount or allowance on the securities they underwrite; that is to say, on their participation in the total underwriting commitment.

A person also renders a service in distribution to the extent that he engages in some selling effort with respect to the securities being sold. Direct sales necessarily involve direct contact between the dealer and customer, giving rise, at least implicitly, to a presumption that a service in distribution has been rendered.

In connection with selling effort, the proposed interpretation recognizes that furnishing research services gen-

erally might aid a dealer in making a sale of specific securities or securities generally. Taken alone, however, the furnishing of research services would not constitute services in distribution. Some specific effort must be performed in connection with the sale on which the selling concession is granted.

A problem in this respect is encountered in connection with designated orders. In the absence of direct contact or selling effort by the designated dealer, such dealer would not be eligible to receive the selling concession, discount, or other allowance. Thus, a designated dealer would have to engage in some direct sales effort with respect to the particular offering in order to have met the requirement that services in distribution be rendered. There must be some communication or other evidence of selling effort before the managing underwriter may honor, and the dealer receive, the designation from a customer.

Selling Concessions

A member who is eligible to receive, and does receive, a selling concession (or discount or other allowance) in a fixed price offering may not grant the selling concession, or otherwise reallow a portion of it to a person not eligible to receive it under section 24; that is to say, to a person who is not a broker or dealer engaged in the investment banking or securities business and who does not render services in distribution, as discussed above. Obviously this means that the member may not rebate to customers all or part of the concession in cash, or in credit against future services or products. Similarly, the amount of the concessions may not be credited against existing obligations of the customers or the member. If the customer owes money to the member—a legal debt for hard dollars—no part of the debt may be satisfied by selling concessions.

However, a member might furnish services or products, including research, to a customer, and members customarily do, in cirumstances where no legal debt is created—at least in form—and repayment in cash is not contemplated. In these circumstances, the research (or other services or products) might be furnished as a general good will effort by the member, in the hope of stimulating business from the customer; or there might be an understanding between the member and the customer that the customer will give business to the member and in an understood or agreed upon amount. In other situations, the circumstances raise a strong inference of expected repayment in a definite amount, either because the goods or services are commercially available or because the member sells them to others. Depending on the facts, certain express or implied mutual business arrangements may result in a violation of section 24 if the arrangement with the customer includes purchasing securities from a member from fixed price offerings. This is discussed in more detail immediately below.

The Board fashioned its proposal to reach all instances where selling concessions, discounts, and other allowances were effectively being granted in some direct or indirect manner without developing a rule which would prohibit normal business practices and be so vague or so all-encompassing that it is not susceptible of reasonable enforcement. To do this the Board believed it was necessary to identify those types of services and products which a dealer or underwriter likely would not furnish without some agreement, promise, or understanding of being compensated in some fashion and probably in some determinable amount.

The Board does not intend by the proposals to suggest that establishing business good will in the form of customer service be prohibited. Rather, it is the existence of an obligation (whether or not legally binding) and the discharge of that obligation through the retention or receipt of selling concessions by underwriters and dealers which is reached. Thus, while the Board recognizes that the proposals developed may not reach every possible situation in which a selling concession might offset some moral obligation, it does believe that its approach reaches the areas of primary concern, namely those situations where the members, at least, are likely to know the dollar market value of services or products furnished and have an agreement or understanding that they will be compensated therefor.

The recommended interpretation of section 24, therefore, would provide that a member has improperly granted a selling concession, discount, or other allowance to a person if the member, itself or through an affiliate, (i) supplies another person with services or products which are "commercially available" or are provided by the member or its affiliate to such person or to others for cash or for some other "agreed upon consideration," including brokerage commissions, and (ii) also retains or receives selling concessions, discounts, or other allowances from purchases by that person or its affiliate of securities from a fixed price offering, unless the member or its affiliate has been, or has arranged and reasonably expects to be, "fully compensated" for such services or products from sources other than the selling concessions, discounts, or allowances retained or received on the sale.

Agreed Upon Consideration

In clarifying the types of arrangements which might result in a member indirectly granting a customer selling concessions, discounts, or other allowances, the Board has determined, as evidenced in the interpretations of section 24, that services or products will be considered to be provided for an "agreed upon consideration" if there is an express or implied agreement between the member providing the service or product and the customer calling for the member to be compensated with an agreed upon or mutually understood source and general amount of consideration. Thus, if a member provides a customer with a service or product and the customer agrees or represents, expressly or impliedly, that it will compensate the member with a specified amount of business, such as brokerage commissions or a range of brokerage commissions depending on the commission rate charged, or with a general minimum amount of brokerage commissions or other consideration, that service or product will be deemed to be offered for an agreed upon consideration. Under such circumstances a member or its affiliate providing such service or product would be required to demonstrate that it was fully compensated for the service or product with consideration other than selling concessions, discounts, or other allowances received or retained on the sale of securities from fixed price offerings.

Commercially Available

A service or product would be construed as "commercially available" if it is generally available on a commercial basis. It would include such things as office space, secretarial services, quotation equipment, news periodicals, certain research products or services, airline tickets, and other items which could be purchased directly or indirectly by the customer from a third party. The terms would not include items of insignificant value, and no question arises under section 24 if a member furnishes such things as incidental business gifts, food, entertainment, or other items not having a substantial value. The term would include products or services which a member receives or purchases from another for redistribution if the same service or product, or a service or product which is substantially an identical service or product, is offered to others on a commercial basis. Thus, a service or product may be commercially available even though the person engaged in redistributing it does not itself make the service or product commercially avail-

able. However, if a member purchases research from a third party which is not available to others and distributes it to its customers under circumstances where it is not to be paid for by cash or agreed upon consideration, that research will not be considered to be commercially available.

FULL CONSIDERATION

In order for a member to show that it or its affiliate received or reasonably expects to receive "full consideration" for providing certain services and products, independent of selling concessions, discounts, or other allowances, the member may identify the arrangement for the consideration including its source and amount and, if appropriate, the collection process for obtaining it. In order to demonstrate that cash, brokerage commissions, or other consideration serves as full consideration, records of accounts should be kept which identify the customer receiving the services or products and the amount of cash, brokerage commissions, or other consideration paid or to be paid by the customer or its affiliate.

There is no intention to prohibit members from continuing to supply services and products to customers for cash or other agreed upon consideration and also sell securities to them from fixed price offerings. What is prohibited is providing services or products to a customer under such circumstances and receiving compensation in the form of selling concessions, discounts, or other allowances on purchases of securities from fixed price public offerings. Compensation for services and products under such circumstances must come from other sources such as cash or brokerage commissions.

Unless the amount of cash, brokerage commissions, or other consideration agreed upon appears on its face to be unreasonably low, dealers would not be required to demonstrate that the cash, brokerage commissions, or other compensation received or to be received represents fair market value for the services or products. Likewise, as long as price differentials are based on factors other than the customer's willingness to, or practice of, purchasing securities from the member out of fixed price offerings, it is not necessary for purposes of section 24 that the member or its affiliates charge the same amount to each person to whom they provide the same or similar services or products. As long as the varying prices charged for services and products are not predicated on the receipt of selling concessions, such a pricing procedure will not be questioned under section 24.

In order to assist in demonstrating compliance with the foregoing, members supplying the types of services or products described above should obtain agreements from customers and keep records which identify that the member was not compensated for the service or product with selling concessions. For example, if brokerage commissions are the source of consideration, the member should be in a position to show the amount of brokerage agreed to, the amount collected, and the amount due.

RECORDS AND OTHER AGREEMENTS

Subsection (b) of section 24 would require members who grant selling concessions to other persons who are eligible to receive them to obtain a written agreement from such persons stating they will make a bona fide public offering of the offered securities and that they will otherwise comply with the provisions of section 24, and if such person is a nonmember broker or dealer in a foreign country, a written agreement that it will comply with sections 8, 24, 25, and 36 of article III. There is no restriction on the form such agreement may take. For example, the written agreements may be obtained in blanket form, covering all instances when a member grants a selling concession, discount, or other allowance to the other party to the agreement or they may be incorporated in the agreement among underwriters' or selling dealers' agreements pertaining to particular offerings. The obligation to obtain written agreements is believed to be necessary to facilitate compliance with and enforcement of section 24.

In addition to the foregoing agreements, certain reports are required of members by operation of proposed subsections (c) and (d) of section 24. Pursuant to subsection (c), members who are requested to designate other brokers or dealers for a sale, particularly syndicate managers, would be required to file reports with the Association within 30 days after the end of each calendar quarter. The reports would pertain to all fixed price offerings which terminated during the preceding quarter and would be required to contain the name of the person making the designation, the identity of the brokers or dealers designated, the identity and amount of securities for which each broker or dealer was designated and the date of the offering.

Pursuant to subsection (d), members who are designated for the sale of securities would be required to keep records of such designations. Such records would be required to be maintained for 24 months and would identify the customer making the designation, the amount of securities for which the member was designated, the manager or managers of the offering, and the date of the offering.

SECTION 36 OF ARTICLE III AND INTERPRETATION THEREOF

The proposal prohibits a member, in connection with securities which are part of a fixed price offering, from selling such securities to, or placing such securities with, any related person of a member. A related person is defined generally as a person in an ownership relationship with a member. Exempt from application of the section, however, are sales of securities to related persons who are either members of the Association or nonmember foreign brokers or dealers who agree to make a bona fide public offering, and otherwise comply with sections 8, 24, 25, and 36 of Article III of the Rules of Fair Practice. The section also does not apply to sales to, or placements in, investment or trading accounts of a member or a related person of a member after the termination of the fixed price offering if the member made a bona fide public offering of the securities. A member is presumed not to have made a bona fide public offering if the securities being offered immediately trade in a secondary market at or above the public offering price.

Since section 24 is designed to reach the indirect as well as direct receipt of selling concessions, the Board recognized that certain ownership relationships between a broker or dealer and another person could result in such person indirectly benefiting from the receipt of a selling concession, discount, or allowance by such broker or dealer even under circumstances where such broker or dealer may not itself have violated section 24. Such a benefit would violate the principles behind section 24 if the person in the ownership relationship with the broker or dealer purchased securities from such broker or dealer in fixed price offerings. Accordingly, the Board believes that prohibiting such transactions, except in the limited situations specified in section 36, is necessary to avoid possible circumvention of section 24.

THE NASD'S STATEMENT OF BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 15A of the Securities Exchange Act of 1934 provides pursuant to section (b)(2) that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the association has the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder and its

own rules. Pursuant to subsection (b)(6) of section 15A of the Act, the Commission must determine that the rules of the Association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interests.

The proposed rules will enable the Association to meet its statutory obligations set forth above. Primarily, the proposed rules will prevent fraudulent acts and practices and foster full and fair disclosure and commercial honor in connection with fixed price offerings. In fixed price offerings of securities the public has come to expect and the offering documents prescribe that all public customers pay the stated public offering price or prices. Such an expectation is inherent in the notion of a fixed price offering which purports to establish a prescribed price to be paid by the public. Further, the price at which the securities are to be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of the security is proposed to be offered, is specifically required to be stated in the registration statement and prospectus by sections 7 and 10 and Schedule A of the Securities Act of 1933.

If practices are permitted which allow certain classes of customers to receive directly or indirectly a more favorable price, the public confidence in the fairness of the securities market, particularly the market involving the offering of securities at a fixed public offering price, will be severely undermined. To permit such practices to occur would be contrary to the Association's obligation to have rules which are designed to prevent fraudulent practices, promote just and equitable principles of trade and which are designed to protect public investors and the general public. Moreover, the proposes rules will prohibit customers from sharing, through certain indirect means, a selling concession, discount or other allowance received or retained by a dealer which, unless prohibited, could result in improper recording of securities purchases and false confirmations of sales, contrary to the rules of the Commission and the Association.

Section 15A(b)(6) of the Exchange Act also requires the Commission to determine that the rules of the Association are not designed to permit unfair discrimination between customers, issuers, brokers or dealers or to fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts or other fees to be charged by its members.

The proposed rules will not permit unfair discrimination between customers, issuers, brokers or dealers. Indeed the proposed rules will eliminate the possibility that favored customers might be able to share all or some of a dealer's selling concession, discount or other allowance received or retained on sales of securities from fixed price offerings, when other customers pay the full, stated public offering price disclosed in the offering documents.

The proposed rules will not fix minimum profits or impose any schedule or fix rates of commissions, discounts or allowances. Issuers and underwriters will continue to determine jointly the price at which securities will be purchased by the underwriters from the issuer and the price or prices at which underwriters will resell to dealers engaged in distribution and to the public, including other dealers. The rules only provide that once the issuers and underwriters have determined a price at which securities will be resold to the public and such price has been disclosed, as it must be under the Securities Act of 1933, the underwriters are prohibited from engaging in distribution practices contrary to those disclosed to the public.

The NASD's Statement on Comments Received From Members, Participants, and Others on Proposed Rule Change

In view of the complexity of the issues involved, comments were solicited from the membership by means of two consecutive submissions contained in Notice to Members: 77-31 and 78-5.

Forty-five comment letters were received in connection with Notice to Members: 77-31. A number of these comments criticized the proposed difinition of fair market price contained in section 8 as being too restrictive, in particular the use of the range between and including the highest independent bid and lowest independent offer. Other commentators criticized the proposals' attempt to establish objective standards for determining fair market price. It was felt that such standards would be rigid and not take into account important factors such as the size of the transaction and the circumstances of a dealer's pattern of trading in the securities taken is trade or comparable securities. Questions were also raised by the commentators with respect to the enforceability of and recordkeeping burden occasioned by section 8.

With respect to the proposed revisions of section 24, many commentators criticized the prophylactic approach taken which prohibited members from accepting designated orders for any dealer not a member of the underwriting group or in excess of a group member's individual underwriting commitment. This approach was criticized as recognizing only a few forms of distribution services and improperly implying an absence of direct contact or selling effort by dealers in connection with a designated order. Some commentators urged the Association to recognize research as a legitimate part of services in distribution. Many commentators also criticized restrictions on bill and deliver practices in both direct sales and designated orders, as it was felt these practices added to the efficiency of the distribution process.

Certain commentators objected that the restrictions on designated orders unfairly applied against regional and smaller dealers. Objections were also raised to an interpretation of section 24 which effectively would prohibit customers from satisfying soft dollar obligations with selling concessions received or retained by a dealer from a sale of securities from a fixed price offering. These commentators were also concerned that such an interpretation would alter the manner in which some dealers have distributed securities.

Several commentators objected to the standard embodied in section 36 for the placement of securities with a related person where a bona fide public offering had made. It was stated that the presumption that a bona fide public offering had not been made, where the securities offered immediately trade in the secondary market at prices above the member's cost, imposed an unnecessarily harsh standard. Commentators objected that this standard would have effectively prohibited a member from placing unsold securities in a trading account if, at the time the syndicate terminated, the securities traded below the public offering price but above the member's cost.

As a result of the comments received, the Association made appropriate revisions to its proposals which were republished for membership comment in Notice to Members: 78-5. A total of seven comment letters were received in connection with the revised proposals. Several commentators alternatively objected that prohibiting members from considering revenues from fixed price offerings to recover research costs will have an adverse effect on the research segment of the industry or that such research constitutes an essential element of selling effort rendered in a distribution with respect to an institution. Certain commentators objected to the basic proposition that specialized services or products must be compensated fully with consideration other than the selling concession received on the sale of a fixed price offering.

THE NASD'S STATEMENT ON BURDEN ON COMPETITION

Certain public comments received on the two proposals published by the Association in Notice to Members 77-31 and Notice to Members 78-5 have suggested that the proposals would impose burdens on competition in various respects. The Association does not concede that the rules do impose burdens on competition, but to the extent that they may, it believes that any such burdens are necessary or appropriate to further the purposes of the Securities Exchange Act.

The comments concerning alleged burdens on competition primarily addressed features of the first published proposal which are not present in the rule changes, as adopted. Some of the comments, however, do pertain to the adopted rules. These comments and the Association's response thereto are generally discussed hereinafter. All of the comment letters are available for review by members of the public at the Securities and Exchange Commission in Washington, D.C.

With respect to the proposed amendment to section 8 of Article III of the NASD's Rules of Fair Practice, concerning so-called "swap" transactions, certain commentators criticized the effort to define "fair market price", stating that only the buyer and seller could determine fair price and that any regulatory efforts in this area would impose artificial hinderances and impact adversely on the free market environment. Some commentators aruged that the rules will deny smaller dealers the opportunity to compete with larger dealers for institutional business, while others argued that the rules will dampen the desire of persons to engage in swap transactions, thereby lowering the general liquidity in the marketplace. At least one commentator believed that the proposal was unfair to institutions since the rule allegedly could have the effect of an isolated quotations controlling the price at which large investment positions could be liquidated and that syndicate managers and members could encourage or discourage swapping by controlling the available quotations.

The Association believes that section 8, as amended, applies to all members equally and believes that comments that smaller dealers are more adversely affected than larger dealers are without merit. The Assocation also believes that the definition of "fair market price" is reasonable and appropriate for the limited purpose it serves in section 8. There is no effort in section 8 to suggest what fair market price is for all transactions but only for transactions in which securites are taken in trade for securities purchased in a fixed price offering. Concern that the rule will control the price at which institutional investors could dispose of a large investment postions also fails to consider the very limited application of the rule. Outside the context of a fixed price offering, and subject to the Rules of Fair Practice relating to just and equitable principles of trade, purchasers and sellers are, of course, free to negotiate the price to be paid. The Association believes that permitting swap transactions to occur at prices as high as the lowest independent offer does not unduly restrict the freedom of purchasers and sellers to set prices. Moreover, the rule itself recognizes that, in special circumstances, members may pay a customer higher than the lowest independent offer in swap transaction. To the limited extent that section 8 may restrict members from establishing prices for swap transaction, the Association believes that such restriction is necessary to carry out its obligation to enforce compliance by its members with the Association's rules and the Securities Exchange Act generally. The Association does not believe that implementation of section 8, as amended, will discourage swap transactions or impair liquidity. It will, however, have the effect of preventing members from taking securites in trade in a deceptive manner which would operate to circumvent the purposes of section 24 of the Rules of Fair Practice and result in what is commonly referred to as overtrading.

The Association does not believe that managers of syndicates or members of syndicates will conspire to or otherwise, give quotations in such a way as to encourage or discourage swapping.

In sum, the Association believes that the definition of "fair market price," and the amendments to secton 8 generally, are necessary or appropriate to further the purposes of the Securities Exchange Act. It believes that the practice of overtrading (paying more than fair market price for securities taken in trade) is a deceptive act or practice constituting conduct inconsistent with high principles of commercial honor and just and equitable principles of trade which should be prohibited. The amendments to section 8 are necessary to enable the Association reasonably to enforce such a prohibition.

With respect to section 24 of Article III of the Association's Rules of Fair Practice and the interpretation thereof, many commentators complained that the first published proposal (which was not adopted) disproportionately impacted on smaller broker-dealers. It was argued that the smaller broker-dealers effectively would not be able to be designated by institutional customers even though the designated firm satisfied the requirement that it render services in distribution and even though the selling concession received on the designated order was not used to offset any soft dollar obligation prohibited by section 24.

In response to these criticisms and other related comments, the Association substantially modified the proposal to eliminate restrictions on designated orders. Certain commentators, however, continued to express concern that underwriters with larger underwriting commitments would be favored. The Association does not believe that such a concern is justifed, since the rule applies equally to all members. Under the revised proposal, an underwriter is not free, as some commentators seem to believe, to give soft dollar credit for sales from its underwriting commitments. Section 24 requires that a member receiving a selling concesssion in a fixed price offering render services in distribution. That is an affirmative obligation. It further imposes a negative restriction by prohibiting a member from granting or sharing that selling concession with persons, such as customers, who are not eligible to receive the selling concession or discount in the first place. Thus, even though an underwriter, by virtue of underwriting part of an offering, has rendered services in distribution and has satisfied its affirmative obligation, it is not then free to ignore the negative restriction.

At least one commentator has indicated that the proposal further restricts a smaller broker-dealer from competing for institutional business by preventing the smaller broker-dealer from obtaining payment for specialized services. Section 24 is designed to make sure that members who have decided to engage in a fixed price offering actually conduct the offering in the manner planned and disclosed to the public. The interpretation explains that indirect, as well as direct, discounts from a fixed price are covered by the section and that crediting a customer with all or part of a selling concession as consideration for a service performed for the customer for an agreed upon consideration results in a prohibited indirect discount from the public offering price.

The Association believes that for section 24 to be meaningful its application cannot be limited to direct forms of discounts or selling concessions. Accordingly, the restriction resulting from section 24's application to indirect forms of discounts or selling concessions are necessary or appropriate to further the purposes of the Act. In any event, nothing in section 24 prohibits an dealer from performing services for clients for an agreed upon consideration and being paid in cash or brokerage commissions. Similarly,

as long as proper records are maintained, a member can perform specialized services for an agreed upon consideration, be paid fully for those services in, for example, brokerage commissions and still retain a selling concession on securities sold to such customers pursuant to a fixed price offering.

Some of the commentators clamed that the revised section 24 has a more adverse effect on the research segment of the industry and that it will result in further concentration of larger, full service broker-dealer firms in the securities industry. This criticism is based largely on the fact that the interpretation to section 24 effectively prohibits utilizations of selling concessions received on the sale of securities in a fixed price offering to satisfy soft-dollar obligations of customers. The proposal further provides, in effect, that a person who furnishes a customer services or products which are commercially available or are offered to anyone for cash or some other agreed upon consideration must be fully compensated for such services and products with consideration other than such selling concessions. The commentators who expressed concern that section 24, as amended, affects the research segment of the industry more unfavorably than other segments, suggested generally that soft-dollar obligations arising from furnishing "legitimate" research (e.g. research as defined in section 28(e) of the Securities Exchange Act) should be permitted to be satisfied with selling concessions received or retained on sales from fixed price offerings. More specifically, such commentators suggested that the interpretation discriminates against third party research and discourages so-called "unbundling." This more specific criticism is based on the fact that the interpretation of section 24 provides that research and other products are commerically available if they could be purchased by the recipient from a third party and that services and products are offered for cash or other agreed upon consideration if they are offered to anyone on such terms.

The prohibition on using selling concessions to satisfy soft dollar obligations applies to all firms in an equal manner. Broker-dealers that, in the past, relied on selling concessions from fixed price offerings to satisfy soft dollar obligations, whether arising from furnishing research or from furnishing other types of services or products, may be affected by the proposal more than firms which did not rely on such a method of payment. The Association, however, believes that the practice of granting indirect concessions or discounts from the public offering price in fixed price offerings results in circumventing the purposes of section 24. It is also inconsistent with statements made in the prospectus. Moreover, if indirect methods of selling securities to customers at prices below a fixed offering price were permitted, a system of distribution designed to treat all members of the public equally would be subverted and certain classes of customers would be accorded favored treatment. Accordingly, the association believes that any burdens on competition resulting from the prohibition on using selling concessions from fixed price offerings to satisfy soft dollar obligations are necessary or appropriate to further the purposes of the Securities Exchange Act.

The Association also believes that the interpretation with respect to the term "commercially available" and "agreed upon consideration" is reasonable and is necessary and appropriate to enable reasonable enforcement of section 24. While the Association believes generally that a selling concession or discount is indirectly granted to a customer if selling concessions from fixed price offerings are used to offset soft dollar obligations, it was necessary to identify more specifically the types of arrangements it thought were prohibited. At the one extreme, a member might be viewed as sharing a selling concession with a customer or granting a customer a discount from fixed price if the member furnished or promised to furnish anything of value to the customer at no cost or at a price below the fair market price. This approach, the Association believes, would unnecessarily intrude on normal business relationships and practices and effectively prohibit various methods of establishing general business good will. Moreover, it would attempt to reach various putative abuses which are more illusory than real.

At the other extreme, the Association might have adopted a rule which only applied to situations where selling concessions received from sales from fixed price offerings were used to offset hard dollar, legal obligations of a customer. The Association, however, believes that such an approach would invite evasion and fail to reach many forms of soft dollar arrangements which, if permitted to occur, would result in certain customers indirectly sharing in the selling concession or receiving a discount from the fixed price in violation of section 24. Accordingly, a balance was struck between these two extremes, and the Association drafted an interpretation which would reach the potential abuses but which would not be so vague or all-encompassing that it would not be susceptible of reasonable enforcement.

In an effort to be reasonable in applying section 24 to soft dollar payments, the interpretation was drawn generally to apply only with respect to obligations which arise from furnishing products and services for which the recipient has agreed to pay some agreed upon consideration or for which it is likely that some consideration has been agreed upon. As a prophylactic measure, the interpretation takes the approach that commercially available products and services and internally generated products and services which have been sold to others for some agreed upon consideration are likely to be furnished for agreed upon consideration. The Association believes that the prophylactic approach in this regard is necessary and appropriate to facilitate reasonable enforcement of section 24. In any event, the Association does not believe that the adoption of section 24, as amended, and the interpretation thereof will result in further concentration in the securities industry. Research firms will continue to be able to offer their services for cash or soft dollar compensation in the form of brokerage commissions or a combination thereof, and will be able to continue to furnish research for no agreed upon consideration without concern that sales of securities from fixed price offerings to recipients of such research will result in a violation of section 24. Finally, the Association does not agree with the suggestion that section 24, as amended, discriminates against third party research. If a broker-dealer purchases from a third party, for redistribution to customers, research which is not available to others, that research is treated no differently than internally generated research which, similarly, is not available to others for cash or some other agreed upon consideration. By the same token internally generated research which is furnished to anyone for cash or agreed upon consideration can be furnished to others only if the broker-dealer furnishing such research is fully compensated therefor with consideration other than selling concessions. The Association believes that a less restrictive approach than that embodied in section 24 and the interpretation thereof will permit circumvention of section 24. Accordingly, it believes that even if the amendments do impose a burden on competition, as suggested by certain commentators, which the Association does not concede, that burden is necessary or appropriate to further the purposes of the Act.

Two commentators have suggested that the solution to the problem is for underwriters to negotiate a price with the issuer and that each underwriter then be permitted to sell the securities to the public at whatever price it is

able to negotiate. The Association, however, is faced with developing rules for a securities distribution system which exists and which is determined by underwriters. It has no basis for imposing a different distribution system on the securities industry and others who rely on the present system to raise capital. The fixed price offering system has worked extremely well for many years and underwriters and issuers continue to support that system of raising capital. As long as that system is utilized, the Association believes that section 24 is necessary to foster full disclosure and fairness.

In addition to the foregoing, one commentator was opposed to the requirement contained in paragraph (b) of section 24 that a member granting a selling concession, discount, or other allowance obtain a written agreement from the person receiving it that such person will make a bona fide offer to the public and will comply with section 24 of Article III of the Rules of Fair Practice. The Association believes that such agreement will serve to remind members of their obligations under the Rules of Fair Practice and will not impose any burden on competition. Members may enter into "blanket" agreements with other dealers which would cover all fixed price offerings, in which they are jointly involved, resulting in little inconvenience to any dealer who sells securities from fixed price offerings, whether or not a member of the underwriting syndicate or selling group.

With respect to the addition of section 36 to Article III of the Association's Rules of Fair Practice, two commentators suggested that section 36 discriminated against managed accounts owned beneficially by a dealer's parent, subsidiary or sister company as opposed to various types of "affiliated" managed accounts such as managed investment companies. The Association does not believe it was necessary to draft a provision so broad as to prohibit members from selling securities from fixed price offerings to accounts over which they exercised investment discretion since all such sales do not result in an indirect grant of a selling concession or discount from the fixed offering price. And, in those instances where such a result would obtain, the Association believed that section 24 and the interpretation thereof adequately applied to prohibit it. Ownership type relationships, such as those covered by section 36, however, were not, in the Association's view, adequately covered by section 24. If, for example, a member sells securities to its parent and receives or retains a selling concession on the sale, the parent necessarily receives that selling concession indirectly through its ownership of that member. The adoption of section 36, therefore, was necessary to achieve uniformity of treatment with respect to the various type of relationships between members and accounts managed by them or by "related persons" of them.

One commentator criticized section 36 for not applying to relationships such as various investment advisory or other fiduciary arrangements which that section was not designed to cover. The Association believes that the interpretation of section 24 is sufficiently broad to apply to the type of arrangements between members and advisory clients which would result in a circumvention of that section, and that to prohibit sales from fixed price offerings to all advisory or other fiduciary accounts would be unnecessarily broad and would, in the Association's view, impose a burden on competition which was neither necessary nor appropriate to further the purposes of the Act.

Section 36 does not create any competitive disadvantage for firms competing for investment advisory business or institutional and individual accounts. Moreover, other laws exist which generally prohibit members and others from acting as principal in transactions with fiduciary accounts, making any concern in this area more theoretical than real.

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 6 copies thereof with the Secretary of the Commission, Securities and Exchange 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 October 10, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 2, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-22241 Filed 8-8-78; 8:45 am]

Federal Register

WEDNESDAY, AUGUST 9, 1978
PART V



DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

■

IMPORTATION OF BIRDS

Financial Responsibility For Costs Associated With Maintenance and Operation of Approved Quarantine Facilities

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations which relate to financial responsibility for costs associated with the maintenance and operation of approved quarantine facilities for the importation of birds, and gives notice requiring importers to reimburse Veterinary Services for all costs incurred which are associated with the maintenance and operation of such facilities. This action is necessary in order to recover costs incurred by Veterinary Services in providing services required by the importer which are associated with the operation and maintenance of approved quarantine facilities for importation of birds. The intended effect of this action is to reimburse Veterinary Services for funds expanded in servicing approved quarantine facilities for importation of birds. This rule is of an emergency nature because the Department anticipates that it will not have funds to provide the services subsequent to October 1, 1978.

DATES: Effective date: October 1, 1978. Comments must be received on or before September 8, 1978.

ADDRESSES: Comments should be addressed to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 817, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. George P. Pierson, USDA, APHIS, VS, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f, respectively), and the Act of July 24, 1919, and section 603(a) of the Act of August 30, 1972 (7 U.S.C. 450b and 2201, respectively), the Animal and Plant Health Inspection Service is amending part 92, title 9, Code of Federal Regulations.

The regulations in 9 CFR 92.11(e) require that each lot of commercial birds, zoological birds or research birds imported into the United States be quarantined for a minimum of 30 days at a USDA quarantine facility or in a facility provided by the importer and approved by the Deputy Administrator. Section 92.11(f) provides that to qualify as an approved quarantine facility and to retain such approval, certain standards for approved quarantine facilities and handling procedures for importation of birds must be met and that the cost of the facility and all costs associated with its maintenance and operation shall be borne by the importer. Section 92.12(a) provides that the Deputy Administrator, Veterinary Services, may prescribe reasonable rates for the costs to the Department incurred in the care, feed and handling, inspection, and other services provided with respect to the animals from the time of unloading at a quarantine port to the time of release from quarantine.

Originally, a limited number of quarantine facilities was approved, and the costs incurred by the Department in servicing these facilities were minimal. Consequently, the Department did not exercise its authority to recover such costs. However, the number of approved quarantine facilities has steadily increased to a total 78 facilities, and costs to the Department in providing services have increased accordingly. It now appears that effective October 1, 1978, no funds will be available to service these facilities. Therefore, the Deputy Administrator, Veterinary Services, is prescribing reasonable rates for all services provided to importers which are associated with the maintenance and operation of approved quarantine facilities for the importation of birds and to recover from the importer or his agent all costs incurred by Veterinary Services in providing such services.

In order to provide importers that will be affected by the anticipated cutoff of funds time to reevaluate their positions and to obtain import permits under these regulations, if they so desire, without an interruption of such services, it is necessary to publish these regulations to become effective October 1, 1978. This is required because no permit to import birds can be issued after August 1, 1978, unless it is known where the money to pay the cost of such service will be derived from as of October 1, 1978. However, the Department is publishing this rule on an interim basis in order to permit public participation in the rulemaking process.

The charge for services involves costs for initial entry service, required inspection service, security service, shipping charges for forwarding diagnostic specimen collected to the laboratory for examination, and laboratory costs incurred by the Department. The initial entry service costs include travel to and from port and/or quarantine station, meeting birds at the port of entry, escorting birds to the quarantine facility, inspecting and counting birds and the examination of birds found to be dead upon arrival.

Required inspection service costs include inspection of birds for evidence of disease, sanitary inspection of the facility, swabbing of live birds, the post mortem examination of dead birds, sample preparation, preparation of reports and supervision of cleaning and disinfection of the facility after the release of birds. The charge will be per lot to cover the entire quarantine and inspection period and one day for the supervision of cleaning and disinfection of the quarantine facility.

Security costs include guard service to maintain control of entrance and egress at the quarantine facility whenever persons other than APHIS representatives are in the facilities. This charge will be made at an hourly rate for the actual time required to service each shipment.

Shipping costs for diagnostic specimen forwarded to the laboratory for examination will be charged on an actual cost basis for each sample forwarded.

Laboratory costs include the processing of laboratory samples taken while the birds are under Veterinary Services supervision. One laboratory sample will contain five cloacal swabs or samples from one post mortem examination.

Estimated costs were calculated using fiscal year 1977 data from the eight States which actually have private quarantine stations. The costs developed by each of these stations were on a per-lot or per-entry basis. Weighted averages were then developed for the cost estimate by multiplying the time or cost factors in each State by the number of entries estimated or lots quarantined as appropriate. Where a station did not separate out an item, i.e., individual shipment, the item was estimated using weighted percentages calculated from the data from States where the item was separated out.

Hourly employee costs were calculated using the average hourly costs for each category of employee, i.e., veterinary medical officer, animal health technician, and bioaid from each State to develop a weighted average cost per man-hour for the eight States

involved. Man-hour costs for bioaids were only available from California and Hawaii. The California figure per man-hour was used for all States except Hawaii because this figure is believed to approximate the hourly employee costs for other mainland States.

The cost estimate for processing laboratory samples was based on data taken from the actual cost of operating the section of the National Veterinary Services Laboratories concerned with tests for VVND. The total cost of testing specimens for VVND was averaged by the number of specimens tested during fiscal year 1977.

After the above estimates for hourly employee costs were calculated, each was increased by 7.05 percent to account for the Federal pay raise of October 1977. A surcharge of 1.5 percent of the base cost plus pay raise was added to cover the cost of initial inspections of stations necessary for initial "approval" and routine inspections, necessary when stations are vacant, for maintaining approval.

The resulting totals were increased by 19.09 percent, the percentage of Animal and Plant Health Inspection Service's fiscal year 1977 funds used for overhead. The overhead includes all administration costs such as regional and area offices, headquarters staff, Office of the Deputy Administrator and Administrator and all support functions such as budget and personnel operations.

Fiscal year 1977 was determined to be the base year because it is the most recent complete year for which figures are available and should approximate the costs to be expected during fiscal year 1979. These approximate costs were $251.56 for entry of each shipment of birds; $1,834.04 for quarantine and inspection of each lot; security was $5.30 per hour; and laboratory costs were $11.76 per sample, plus actual shipping charges. Further, if work is performed outside the regular tour of duty of the employee providing the required services, overtime charges must be paid in accordance with the provisions of 9 CFR Part 97.

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended in the following respects:

In § 92.11, a new paragraph (g) is added and the second sentence of paragraph (f) is amended to read:

§ 92.11 Quarantine requirements.

* * * * *

(f) *Standards for approved quarantine facilities and handling procedures for importation of birds.* * * * The cost of the facility and all costs associated with the maintenance and operations of such facility shall be borne by the importer in accordance with the provisions of § 92.11(g) and § 92.12 (a) and (c).

* * * * *

(g) *Charges for services.* The charges to be borne by importers for services provided for quarantine facilities approved in accordance with § 92.11(f) of this part shall be:

(1) The total Veterinary Services employee's time at the appropriate GS hourly rate of such employee to actually perform the service, including his travel time and his travel expenses; *Provided, however,* Such time and travel expense shall not exceed the time and travel expense to and from his official duty station; [14]

(2) Laboratory costs at $11.76 per sample, plus shipping charges per sample, and;

(3) A surcharge for overhead based on the most current historical data available showing the percentage of APHIS funds expended for administrative support.

These amendments should be made effective on October 1, 1978, to be of maximum benefit to affected persons.

Done at Washington, D.C., this 8th day of August 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-22429 Filed 8-8-78; 11:59 am]

[14] If work is done outside the regular tour of duty of the employee providing the service, overtime charges must be paid in accordance with 9 CFR Part 97.

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