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TUESDAY, OCTOBER 10, 1978



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

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

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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IMPROVING GOVERNMENT REGULATIONS

SCHEDULE OF SEMIANNUAL AGENDAS OF REGULATIONS

Executive order 12044, Improving Government Regulations, (43 FR 12661) requires that executive agencies publish semiannual agendas of significant regulations under development. At a minimum each agenda is to describe the regulations being considered by the agency, the need for and legal basis for the action being taken, the name and telephone number of a knowledgeable agency official, and the status of regulations previously published.

The agencies have chosen the following dates to publish their agendas. The Office of the Federal Register compiled this schedule as a public service.

Agency for International Development	Feb. 15, 1979; July 16, 1979.
Civil Service Commission	Dec. 1, 1978; May 1, 1979.
Federal Mediation and Conciliation Service	May 1, 1979; Oct. 1, 1979.
Federal Reserve System	Feb. 2, 1979; Aug. 2, 1979.
Treasury Department:	
Government Financial Operations Bureau	Mar. 30, 1979; Sept. 30, 1979.
Internal Revenue Service	Mar. 31, 1979; Sept. 30, 1979.
Public Debt Bureau	Apr. 15, 1979; Oct. 15, 1979.
All other offices and bureaus	Feb. 1, 1979; Aug. 1, 1979.

NOTE.—The entry for "All other offices and bureaus" of the Treasury Department was omitted from last week's listing.

[3195-01]

Title 3—The President

Executive Order 12086 • **October 5, 1978**

Consolidation of Contract Compliance Functions for Equal Employment Opportunity

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1-1. *Transfer of Functions.*

1-101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order No. 11246, as amended, are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.
(b) Department of Defense.
(c) Department of the Interior.
(d) Department of Commerce.
(e) Department of Health, Education, and Welfare.
(f) Department of Housing and Urban Development.
(g) Department of Transportation.
(h) Department of Energy.
(i) Environmental Protection Agency.
(j) General Services Administration.
(k) Small Business Administration.

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1-2. *Conforming Amendments to Executive Order No. 11246.*

1-201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.".

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of

Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.'".

1-202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1-203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1-204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.".

1-205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.".

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.".

1-206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1-207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1-208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or sus-

pended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.".

1-209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.".

1-210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.".

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.".

1-211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.".

1-212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order,".

1-213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the

Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.".

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.".

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.".

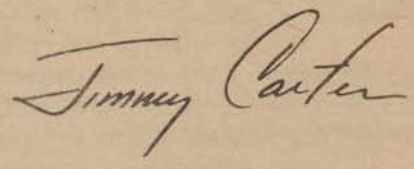
1-214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.".

1-3. *General Provisions.*

1-301. The transfers or reassignments provided by Section 1-1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1-302. The conforming amendments provided by Section 1-2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1-101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1-301 of this Order.



THE WHITE HOUSE,
October 5, 1978.

[FR Doc. 78-28701 Filed 10-6-78; 10:26 am]

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.

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 297—PROTECTION OF PRIVACY IN PERSONNEL RECORDS

Specific Exemptions

AGENCY: U.S. Civil Service Commission.

ACTION: Final rule.

SUMMARY: This notice announces the adoption of changes to the Commission's regulations at 5 CFR 297.117. These changes will exempt certain, limited and specific records in the Presidential Management Intern Program Records (CSC-9) system of records. The notice of adoption of that system appears elsewhere in this issue of the FEDERAL REGISTER. This exemption is designed only to assure the protection of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the fairness or objectivity of the testing or examination process and does not exempt the remaining records in the system. These records will be exempt from the provisions of subsections (d), (e)(4)(H), and (f) of the Privacy Act of 1974, 5 U.S.C. 552a.

EFFECTIVE DATE: October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William H. Lynch, Bureau of Personnel Management Information Systems, 202-254-9778.

SUPPLEMENTARY INFORMATION: On page 35721 of the FEDERAL REGISTER of August 11, 1978, the Commission published a proposal to amend § 297.117(a) and to add § 297.117(b)(3) to the Commission's regulations at 5 CFR Part 297. The change to § 297.117(a) provides for reference to a new system of records (CSC-10), while the addition of § 297.117(3) provides for exemption from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a, for limited and specific records in that system. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation. No comments have been received and the regulations are hereby adopted with one change, i.e., the identification symbol for the system is to be CSC-9 rather than CSC-10, necessitated by the canceling of the former CSC-9 system (see 43 FR 31426). The complete text of the changes are set forth below.

Accordingly, 5 CFR 297.117 is amended by correcting § 297.117(a) and by adding § 297.117(b)(3) as follows:

§ 297.117 Specific exemptions.

(a) Some systems of records under the Act that are maintained by the Commission contain material subject to exemptions appearing at 5 U.S.C. 552a (k) (1), (2), (5), and (6) relating to national defense and foreign policy materials, civil law enforcement in connection with the administration of the merit system, information obtained from a source who furnished such information under a properly granted promise that the identity of the source would be held in confidence, and to testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The systems of records published in the FEDERAL REGISTER by the Commission which are within these exemptions are: CSC-8, CSC-9, CSC/GOVT-4, and CSC/GOVT-5. The Commission hereby asserts a claim to specific exemptions of such systems of records. The materials can be exempt from 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f).

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Commission or an agency for the Commission, including the reasons and parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justifications for the exemptions, are as follows:

* * * * *

(3) Presidential Management Intern Program Records. All material and information about an individual that meet the criteria stated in 5 U.S.C. 552a (k)(6) are exempt from the requirements of 5 U.S.C. 552a (d), (e)(4) (H), and (f) relating to access and contest, publication of specific material annually in the FEDERAL REGISTER, and provisions regarding agency rules, in that portions of this system relate to testing or examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity of fairness of the testing or examination process.

UNITED STATES CIVIL SERVICE COMMISSIOIN,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-28599 Filed 10-6-78; 8:45 am]

[3410-07]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER P—GUARANTEED LOANS

PART 1980—GENERAL

Subpart D—Rural Housing Program Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations concerning the guaranteed rural housing program. These new provisions include limiting the eligibility for guaranteed rural housing (RH, loans to above-moderate income applicants and terminating the eligibility for moderate-income applicants in the program, having the interest rate negotiated between the lender and borrower, and removing the "graduation" requirement. The intended effect of this action is to implement the provisions of a public law as it pertains to the guaranteed rural housing program.

EFFECTIVE DATE: October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Reed J. Petersen, Rural Housing Specialist, Single Family Housing Loan Division, phone 202-447-4295.

SUPPLEMENTARY INFORMATION: Subpart D of part 1980, chapter XVIII, title 7 in the Code of Federal Regulations is amended, subchapter N is retitled as "Security Servicing", a new Subchapter P, "Guaranteed Loans" is established, part 1980 is retitled "General" and moved to subchapter P, and all regulations formerly in subchapter N are now under subchapter P. The Farmers Home Administration published a notice of proposed rulemaking at page 36952 of the FEDERAL REGISTER for Monday, August 21, 1978 regarding this regulation. Comments were received and accepted until September 20, 1978. Three comments were received. One comment was in total favor of the proposal. One comment suggested an interest rate ceiling be adopted. Section 1980.314 was, therefore, revised to say the interest rate will not exceed any applicable established usury rate. One comment suggests that paperwork requirements be kept to a minimum. The agency's intent has continually been to keep the paperwork at a minimum for the guaranteed rural housing program, and it is hoped that further reduction in paperwork will be possible in the future. Late comments received will be considered for future revisions of the regulations.

The purpose of this amendment is to implement those changes pertaining to the guaranteed rural housing program authorized by the Housing and Community Development Act of 1977.

The principal changes in the regulation are:

1. The eligiblity requirement of applicants for guaranteed rural housing loans is changed from moderate to above moderate income and the above moderate income limits are defined.

2. The interest rate may be as agreed upon by the borrower and lender.

3. The "graduation" requirement is removed. Borrowers are no longer required to refinance the loan at a future date. Under the previous guaranteed loan program, borrowers were required to agree to refinance their loan if requested to do so by FmHA and if other credit was available.

4. The terms "local lender" and "minimum adequate site" are more fully defined.

5. The requirements for refinancing debts with an FmHA guaranteed loan are clarified.

6. The loan limits and down payment requirements are clarified.

7. Adequate but modest housing for above-moderate income applicants is clarified.

8. The statement signed by FmHA approving the appraisal made by the lender's appraiser is no longer required.

9. The need for a builder warranty for new construction and other improvements is clarified.

10. The proper time to prepare the conditional commitment for guarantee is clarified.

11. References to insured loans are removed because insured loans may not, under present regulations, be made to applicants with above moderate incomes.

12. Other minor corrections and changes are made for clarity.

Accordingly, the following changes are made;

1. Subchapter N of chapter XVIII—title amended to read "Security Servicing".

2. A new subchapter P is established in chapter XVIII and is titled "Guaranteed Loans".

3. The title of part 1980 is amended to read "General" and the part and all regulations in the part are moved to subchapter P.

4. As amended, subpart D of part 1980, subchapter P, chapter XVIII, title 7 in the Code of Federal Regulations reads as follows:

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER P—GUARANTEED LOANS

PART 1980—GENERAL

* * * * *

Subpart D—Rural Housing Program Loans

Sec.

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AUTHORITY: 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

PART 1980—GENERAL

Subpart D—Rural Housing Program Loans

§ 1980.301 Introduction.

(a) *Policy.* This subpart, supplemented by subpart A of this part, contains regulations for unsubsidized single family (SF) rural housing (RH) loans to above-moderate income families guaranteed by the Farmers Home Administration (FmHA) and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, servicing, holding, or liquidating such loans.

(b) *Program objective.* The basic objective of the RH loan guarantee program is to assist above-moderate income families in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans when loans would not be made without a guarantee.

(c) *Program administration.* The loan guarantee program, like other FmHA programs, is administered by the Administrator through a State director, serving each State, through a district director to the county supervisor. All applications for guaranteed loans should be made with an eligible lender. The county supervisor is the focal point for this FmHA loan guarantee program and the local contact person for processing and servicing guarantees although this subpart refers in various places to the duties and responsibilities of other FmHA employees.

(d) *Administrative provisions.* Throughout this regulation there appear administrative provisions for the FmHA State director, district director, and county supervisor. These provisions establish the internal duties, responsibilities, and procedures to carry out the requirements of the program. These provisions are identified as "Administrative" and follow appropriate sections of this subpart.

§ 1980.302 Definitions.

The following definitions, in addition to those in subpart A of this part, are applicable to RH loans:

(a) *Above moderate income.* An adjusted annual income of more than the maximum moderate income limit established for the State as shown in exhibit D to part 1822, subpart A (FmHA instruction 444.1, exhibit D), but not more than $20,000, except for Hawaii, Guam, and Alaska in which the maximum is $24,000, $24,000, and $30,000 respectively. (See also § 1980.330(h).)

(b) *Act.* Title V of the Housing Act of 1949, as amended. (42 U.S.C. 1471, et seq.).

(c) *Applicant.* An individual(s) who needs housing and applies for assistance in accordance with this regulation.

(d) *Development costs.* These costs include, but are not limited, to, those for acquisition, planning, construction, or repair of the proposed dwelling; purchase of buildings, land, easements, rights-of-way; and payment of interest during the period before the first principal payment becomes due, including interest on interim financing.

(e) *Dwelling.* A home suitable for the needs of a family. An existing dwelling is one which is more than 1 year old or was previously occupied as a residence.

(f) *Family.* One person or two or more persons who reside in or will reside in one dwelling.

(g) *Housing.* An adequate but modest single family dwelling and related essential equipment and facilities for which loans are authorized in § 1980.306. The term housing also includes an adequate site and related easements and appurtenances owned or being acquired by the applicant.

(h) *Minimum adequate site.* The smallest area sufficient for the dwelling and related facilities to be built, purchased or refinanced, and a yard. It is usually not more than 1 acre of nonincome producing land unless more than 1 acre is needed to comply with local code requirements or to provide for a safe and adequate water supply or waste disposal system.

(i) *Owner.* The holder of fee simple title or of a leasehold meeting the requirements of § 1980.309.

(j) *Packager.* A builder, developer, real estate agent, or other party who obtains and presents to an approved lender one or more applications from eligible applicant(s) for guaranteed RH loan(s) with which the applicant will obtain adequate housing that will be provided under an existing contract to buy, build, or repair at a fixed price.

(k) *Rural area.* Any town, village, city, or place including the immediately adjacent densely settled area which is not part of or associated with an urban area, and

(1) Has a population not in excess of 10,000 if it is rural in character; or

(2) Has a population in excess of 10,000 but not in excess of 20,000, is not contained within a standard metropolitan statistical area (SMSA), and has a serious lack of mortgage credit for low- and moderate-income families as determined by FmHA.

(l) *Senior citizen.* The term "senior citizen" refers to age only and not to nationality. It is a person who is 62 years of age or over and, in the case of a married couple, may be either spouse.

(m) *State.* Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, or the territories and possessions of the United States.

§ 1980.303 [Reserved]

§ 1980.304 Lenders.

(a) *Eligible lenders.* Eligible lenders as defined in § 1980.13(b)(1) of subpart A of this part are eligible for FmHA RH loan guarantees and do not need to apply to FmHA for an eligibility determination.

(b) *Other lenders.* All other lenders will apply to FmHA for, and receive, an eligibility determination for making RH guaranteed loans in accordance with § 1980.13 of subpart A of this part, before applying for an RH loan guarantee.

(c) *Local lender.* A local lender is defined in § 1980.13(a) of subpart A of this part and must, at a minimum, be represented in its main, branch, or agent's office by an employee or agent authorized to act for the lender. A local agent who "packages" loans for or refers applicant inquiries to the lender does not meet the requirement of a local lender.

Administrative. The State director is authorized to make lender eligibility determinations for RH loan guarantees in accordance with this section and § 1980.13 of subpart A of this part. The State director will submit the lender's application and the proposed eligibility notification to the national office for review and comment before notifying the lender of the eligibility determination.

§ 1980.305 Rural area determinations.

The State director is responsible for determining the rural areas in a State in accordance with § 1822.3(c) of subpart A of part 1822 of this chapter (FmHA instruction 444.1, paragraph III C). The lender may contact the FmHA county supervisor to determine if an area is rural for purposes of the guaranteed loan program.

§ 1980.306 Loan purposes.

A loan may be guaranteed if made to an eligible applicant for such of the following purposes as are necessary to enable the applicant to obtain adequate, decent, safe, and sanitary housing in a rural area for use by the applicant's family as a permanent residence:

(a) *Purchase existing dwelling and site.* Buy an existing dwelling and a minimum adequate site on which it is located.

(b) *Purchase site.* Buy a minimum adequate site on which to place a dwelling, if the applicant does not already own such a site.

(c) *Construct or purchase and relocate dwelling.* Build a dwelling on, or purchase and move an existing dwelling onto, a site whether already owned or being acquired by the applicant.

(d) *Rehabilitate or improve existing dwellings.* Repair, enlarge, or otherwise improve or rehabilitate an existing dwelling already owned by the applicant or being acquired with loan funds, whether located on a site already owned or being acquired by the applicant.

(e) *Utilities and facilities.* Provide adequate water, sewer, electric, heating, and other utilities and facilities that are necessary to make the housing adequate.

(f) *Equipment and material.* Purchase and install essential dwelling equipment and material such as a range, oven, refrigerator, clothes washer, or clothes dryer whether or not such equipment becomes real estate or fixtures under applicable State law. When such equipment is purchased with loan funds, it shall be in connection with the purchase, construction, or rehabilitation of the dwelling and shall be considered a part of the housing.

(g) *Site preparation.* Provide grading, seeding or sodding of lawns, trees, walks, yard fences, and driveways to building sites located adjacent to a road or street, and other such facilities, when included in a loan to buy, build, or repair a dwelling.

(h) *Real estate taxes.* For initial loans, pay real estate taxes on the security property that are owed by the borrower and that are due and payable at the time of loan closing: *Provided,* The amount to be used for taxes is not a substantial part of the loan.

(i) *Expenses, fees, and social security taxes.* Pay expenses incident to obtain-

ing plans and making the loan, such as fees and charges for legal, appraisal, architectural, engineering, and other technical services, closing costs, reasonable connection fees for utilities, such as water, sewer, electric, and gas, guarantee fee, and a loan or origination fee or transfer fee, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of social security taxes for labor hired by the borrower in connection with making the planned improvements.

(j) *Interim financing.* Pay interim financing debts incurred for authorized loan purposes. This is not considered to be refinancing.

(k) *Refinancing.* Refinance debts owed by the applicant when all of the following conditions exist:

(1) The debts were incurred by the applicant at least 5 years before the application for the loan was made.

(2) The debts were incurred for a purpose for which a loan is authorized to be made under another paragraph of this section.

(3) The payments on the debt are so seriously delinquent that the applicant is likely to lose the dwelling at an early date if the loan is not refinanced, or if combined with a loan for improvement, rehabilitation, or repairs and not refinanced, the applicant will experience a financial hardship in repaying the debts.

(4) The applicant's present creditors will not give rates and terms on the existing debts that can reasonably be expected to be met.

(5) The debts constitute a lien against the property on which a mortgage will be taken to secure the loan.

(6) A sound loan can be made.

§ 1980.307 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* A loan will not be guaranteed if loan funds are to be used to buy furniture or other personal property except essential equipment and materials authorized in § 1980.306(f).

(b) *Limitations.* A loan for new or existing housing may not be made for more than 97 percent of the market value, selling price (including the cost of marketing which includes such costs or customary earned charges and fees and other costs), or cost of improvements or construction, whichever is less, up to $25,000 and 95 percent of the amount in excess of $25,000. However, a loan may not be made for more than 90 percent of the market value or selling price, whichever is less, for dwellings less than 1 year old when the lender or lenders, representative, Department of Housing and Urban Development (HUD), Veterans Administration (VA), or FmHA did not make inspections during construction. Inspection reports and FmHA acceptance must be included in the applicant's loan file. See § 1980.323 for applicant equity requirements. No discount points in the nature of prepaid interest are to be involved in the transaction.

(c) *Type of housing.* A dwelling financed for a family with an above-moderate income must meet the following requirements:

(1) Be adequate but modest in size, design, and cost and provide decent, safe, and sanitary housing consistent with the needs of the applicant and the market in the community but must not be of elaborate or extravagant design or material. Adequate housing ordinarily can be provided within less than 1,400 square feet of living area. When the applicant has an unusually large family, a somewhat larger house may be justified to provide adequate sleeping space. Living area does not include space such as a patio, carport, garage, porch not suited for year-around use, unfinished basement, and, if the dwelling does not have a basement, space for utilities such as furnace and hot water heater; however, such space must be kept within reasonable limits and not expanded to circumvent the limitations of this paragraph. Dwellings, however, may contain features such as two complete baths, a family room, double garage, fireplace, air conditioning, and carpeting if such design features or items are customarily included in other adequate but modest homes in the area for families with similar incomes.

(2) Any dwelling purchased, repaired, enlarged, or otherwise improved or rehabilitated with loan funds must be structurally adequate and in good condition before the loan is guaranteed. Existing housing will meet the minimum property standards for existing housing. (See § 1980.327.)

(d) *Subdivision clearance and approval—5 units or more.* (1) When housing units are proposed for a new or existing subdivision, the subdivision must be approved by FmHA before issuance of a conditional commitment for guarantee. The subdivision must meet the requirements of subpart D of part 1804 of this chapter (FmHA instruction 424.5).

(2) The builder, developer, or packager will submit the following information to the lender who will furnish a copy of it to FmHA with a request for subdivision approval:

(i) Subdivision plans and specifications with sufficient detail to show the intent, extent, kind, and quality of work and materials and the house location for each lot. The builder, developer, or packager will also certify to the lender that the subdivision meets planning, zoning, development, and all other requirements.

(ii) A realistic estimate of need and demand for the number of living units of the type proposed, based on the availability of existing suitable housing in the area.

(iii) Size of tract and advice as to its ownership and existing options to purchase; also, a map showing the location and other supporting information on the neighborhood and existing facilities and services, such as medical and dental services, shopping areas, schools, churches, hospitals, recreation and communication facilities; business and industrial enterprises; streets or roads; central water, electric, gas, and sewerage systems; solid waste disposals services; public and private transportation; and police and fire protection.

(iv) A preliminary plot plan and building plan, if available; advice as to type of construction; estimated total cost per living unit; utilities to be used and whether each is or will be publicly, community, or individually owned.

Administrative: FmHA subdivision approval. If the subdivision is approved in accordance with Subpart D of Part 1804 of this chapter (FmHA instruction 424.5), the FmHA county supervisor will advise the lender by letter that FmHA will issue loan note guarantee(s) in the subdivision if all applicable requirements of this regulation are met and if guarantee funding authority is available.

§ 1980.308 Transactions which will not be guaranteed.

The following transactions will not be guaranteed by FmHA:

(a) *Lease payments.* Lease payments.

(b) *Loans by other Federal agencies.* Loans made by other Federal agencies. This does not preclude the guaranteeing of loans made by the Bank for Cooperatives, or the Federal Land Bank.

§ 1980.309 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant on land owned by a State, political subdivision, public body, or public agency, on Indian tribal lands which are not available for purchase or on land where the lender determines that long-term leasing of homesites by nonpublic bodies is a well established practice and such leaseholds are freely marketable in the area provided the lender determines that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term, from the date of loan approval, of at least 50 years (a lease for 25 years with an option to the lessee to renew for an additional 25

years would be considered a 50-year lease), except when:

(1) A lease is granted for the purpose of permitting a family to obtain a housing loan and the time required to process and approve the loan results in the unexpired term of the lease being not less than 49 years; or

(2) A lease is in existence at last 1 year prior to the date of loan approval. A housing loan may be guaranteed: *Provided,* The unexpired term of the lease is at least 50 percent longer than the repayment period of the loan. In no case will the unexpired term of the lease be less than 15 years.

(c) *Lender certification.* The lender will certify to FmHA that the requirements of this section are met.

§§ 1980.310–1980.313 [Reserved]

§ 1980.314 *Interest rate.*

The loan shall bear interest at a rate agreed upon by the borrower and lender and must be not more than that being charged in the area by lenders for comparable loans without a guarantee. The interest rate will not exceed any applicable established usury rate. The interest rate will be shown in the conditional commitment for comparable loans guarantee and in the guaranteed loan promissory note. The interest rate will remain constant during the existence of the FmHA guarantee, except as provided in §§ 1980.343 and 1980.344 in transfer and assumption cases in which the interest rate to the transferee may be changed.

§ 1980.315 Terms of loan repayment.

(a) *Note.* Principal and interest on the loan will be due and payable as provided in the promissory note. Ordinarily, monthly payments will be made, however, when the borrower receives a majority of income on a seasonal basis such as from the sale of farm crops, the lender may structure payments annually, semi-annually, or quarterly.

(b) *Maximum term.* The maximum term allowable for final maturity of an FmHA guaranteed loan shall be not more than thirty-three (33) years from the date of the note. The term may be such shorter period as may be necessary to assure that the loan will be adequately secured. If a leasehold is involved, see § 1980.309.

§ 1980.316 [Reserved]

§ 1980.317 Clearinghouse considerations.

When the preapplication or application involves a loan or loans in a subdivision of 10 or more new dwelling units in which HUD, VA, or FmHA has not previously made, insured, or guaranteed a housing loan, the lender will see that the requirements of part 1901, subpart H, of this chapter are complied with (FmHA instruction 1901-H).

§ 1980.318 Flood plains and wetlands.

The lender is responsible for determining if the housing is located in a flood plain or a wetland. Refer to part 1940, subparts M and Q of this chapter.

§ 1980.319 Flood or mudslide hazard area precautions.

The lender is responsible for determining if the housing is located in a special flood or mudslide hazard area. Refer to § 1980.42 of subpart A of this part and subpart B of part 1806 of this chapter (FmHA instruction 426.2).

§ 1980.320 Equal opportunity and nondiscrimination requirements in use, occupancy, rental or sale of housing.

(a) *Compliance.* The lender and borrower are prohibited from discriminating or segregating on account of race, color, religion, sex, marital status, or national origin in connection with the use, occupancy, or sale of housing. The lender and borrower are responsible for seeing that no agent, lessee, or operator so discriminates or segregates. These requirements should be discussed with the applicant or packager, builder or developer, and other parties involved as early in the negotiations as possible. For specific statement of some of those responsibilities, see the following:

(1) *Executive Order No. 11063.* It is dated November 20, 1962 (27 FR 11527, 3 CFR 652 (1959–63 Compilation), 42 U.S.C.A 1982 note), and prohibits such discrimination or segregation when Federal financial assistance is involved in the provision, rehabilitation, or operation of housing and related facilities.

(2) *Fair Housing Act.* This is title VIII of the Civil Rights Act of 1968 (Pub. L. 90–294, 42 U.S.C. 3601 et seq.). It prohibits discrimination in the sale or rental of dwellings provided in whole or in part with loans guaranteed by the Federal Government; and provides for filing and handling complaints and investigations regarding, and enforcement of remedies for violations of, fair housing requirements.

(b) *Reporting.* If there is indication of noncompliance with these requirements, such facts will be reported by the borrower, lender, or county supervisor in writing to the State director for remedial action. Should the State director need assistance in handling any complaints of noncompliance, he will request assistance from the national office. Compliance and complaints will be handled in accordance with subpart E, part 1901 of this chapter.

§ 1980.321–1980.322 [Reserved]

§ 1980.323 Applicant equity requirements.

For new or existing housing, the applicant must contribute a down payment, in cash or equity in owned land and/or real estate improvements thereon, of 3 percent of the amount needed to buy, build, or improve the dwelling up to $25,000, and 5 percent of the amount in excess of $25,000. Except that a down payment of 10 percent is required for dwellings less than 1 year old if approved construction inspections have not been made. (See § 1980.329(b) for construction inspection requirements). If the down payment is in land or real estate improvements, an appraisal by the lender's appraiser must be made to determine the market value. The down payment must be from the applicant's own resources and may not be from such sources as a cash rebate, loan, reduced selling price, or agreement between the applicant and seller, builder, or any other party to the loan.

§ 1980.324 Collateral.

(a) *General.* The entire loan must be secured by a first lien, or a second lien in case of a repair loan, on the housing and the lender will maintain this lien priority. A guaranteed subsequent loan to a previously guaranteed loan must be secured by not less than a second lien. See § 1980.325 regarding provisions of security instruments. Also, see § 1980.309 regarding liens on leaseholds. The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interests of the lender, holder, and FmHA.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment or other parties against the security property or the borrower, and that there are no suits pending or anticipated that would affect the security property or the borrower.

(c) *All collateral must secure entire loan.* All collateral must secure the entire loan unless that is legally impossible as in some Texas homestead cases. The lender cannot take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. This also includes but is not limited to mortgage insurance, which, if obtained, must protect both the guaranteed and unguaranteed portions of the loan.

§ 1980.325 Promissory notes and security instruments.

The lender may use its forms of promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements, including chattel mortgages in Louisiana and Puerto Rico. The lender is responsible for determining that the security instruments are adequate. The security instruments must:

(a) Contain a provision making it a default if the borrower does not continue to occupy the housing as a primary residence.

(b) Not contain any provisions that are in conflict or are inconsistent with the provisions of this subpart.

§ 1980.326 Appraisal of property serving as collateral.

(a) *Qualified appraiser.* The lender is responsible for seeing that the property that will serve as collateral for loans is appraised by a qualified appraiser. The appraisal will be the appraisers opinion regarding the market value of the collateral.

(b) *Lender responsible.* The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals. If the lender has any questions in this regard, it should consult with FmHA before having an appraisal made.

(c) *Appraisal report.* The appraisal report which the lender is required to submit to FmHA as an enclosure with the application will cover any property that is to serve as security.

Administrative. A. FmHA review of appraisals. Appraisal reports are part of the material to be reviewed by FmHA in determining whether to issue a conditional commitment to guarantee the loan or a loan note guarantee. The review of each appraisal will be made by the FmHA county supervisor or other FmHA personnel designated by the county supervisor.

§ 1980.327 Acquistion, construction, and development.

(a) *Acquisition of property.* The lender is responsible for seeing that any property to be acquired with loan funds is acquired as planned and that the required security is obtained. The lender is also responsible when financing an existing dwelling for seeing that a termite inspection is obtained if normally required in the area, and the requirements of paragraphs (b) (2), (4), (6), and (11) of this section are met.

(b) *Construction or development.* The lender and borrower are responsible for seeing that the loan purposes are accomplished with the loan funds. This includes, but is not limited to seeing that:

(1) Part 1804 of this chapter is used as a guide for planning and performing development work (FmHA instruction 424.5).

(2) Applicable laws, ordinances, codes, and regulations, including the Minimum Property Standards (MPS) for One and Two Family Dwellings No. 4900.1, issued by the HUD are complied with. Copies of the MPS may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Drawings, specifications, and estimates are adequate.

(4) Adequate water, electric, heating, waste disposal, and any other necessary utilities and facilities are obtained.

(5) Construction or development contracts contain adequate provisions for the undertaking and are properly awarded and executed, and contractors are bonded when the lender considers bonding necessary.

(6) Equal opportunity and nondiscrimination requirements are met. See § 1980.41 of subpart A of this part.

(7) Construction or development is performed expeditiously and properly, including inspection of sites and construction or development in various stages of completion to determine that the work and material conform with the drawings and specifications and any other requirements.

(8) Periodic or partial payments for construction or development are limited to a reasonable percentage as determined by the lender of the actual value of the work and material in place.

(9) Final payment is made only after final inspection has been made and the construction or development has been found proper in all respects.

(10) A builder's warranty is issued when new construction, repair or rehabilitation is involved, which warrants the dwelling materials and workmanship for at least 1 year from the date of completion and acceptance of the work.

(11) No claims or liens of laborers, materialmen, contractors, subcontractors, or other parties exist against the borrower or the security property.

§ 1980.328 Overruns in development costs.

When it is determined that there will be an overrun, either at bid opening or after construction has begun, the lender and borrower, with the advice of FmHA, will determine how the overrun costs will be met.

(a) *Minor changes.* Minor changes in the project which do not effect the approved loan purposes, increase the cost, or adversely affect the objectives or soundness of the loan may be approved by the borrower and lender. If any line item as reflected in the use of proceeds is changed 10 percent or less and the total loan remains the same, the lender may approve the change.

(b) *Major changes.* If major changes are necessary, which cannot be handled as provided in paragraph (a) of this section, the lender and borrower, with the advice of FmHA, will determine how the change or overrun costs will be met. FmHA will determine and inform the lender in writing whether the loan can still be guaranteed. The county supervisor may approve cost overruns and line item changes on all loans. In any event, the loan will never exceed the limits specified in § 1980.307.

Administrative. The county supervisor will submit Form FmHA 440-1 "Request for Obligation of Funds," to the Finance Office for the new amount of any increased loan. Form FmHA 440-10 "Cancellation of Loan or Grant Check and/or Obligation," will be used to cancel the original obligation. The loan note guarantee will not be issued until the revised Form FmHA 440-57 "Acknowledgement of Obligated Funds/Check Request", is received from the Finance Office. If a loan was obligated in a prior fiscal year, form FmHA 440-1 will be prepared for the increased in obligation and the form noted in the upper right-hand margin: "Increase in obligation of previous loan."

§ 1980.329 Inspections of construction and compliance reviews.

(a) *Qualified inspectors.* Inspections will be made during construction by a qualified construction inspector approved by the lender. The lender will notify FmHA when construction begins so that it can also make inspections at various stages of construction, repair, or development if it desires to do so. The lender will also notify FmHA when the construction is completed as FmHA will also always make a final inspection for the protection of its financial interest. Any inspections made by FmHA are made only to determine the adequacy of the security for the loan guarantee and will not establish a duty on FmHA either to notify the borrower or lender if the construction is not adequate or to see that any defective work is corrected. In connection with inspections of construction, equal opportunity and nondiscrimination compliance reviews will be made as required by § 1980.41(b)(6) of subpart A of this part.

(b) *Inspections required by lender.* The lender will see that the following three inspections (and any additional inspections it deems necessary or advisable) are made:

(1) When footings and foundation are ready to be placed.

(2) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(3) When construction is completed.

Administrative. A. FmHA inspections. If more than $2,500 of guaranteed loan funds

are used to construct or repair buildings, provide land development work, acquire real or personal property, or for similar purposes, the county supervisor or other qualifed FmHA personnel will make such inspections as the county supervisor deems necessary in the particular case to ascertain the existence and condition of such property. Regardless of the number of inspections, one inspection will always be made when construction is completed. Such inspections will be reflected on Form FmHA 424-12 "Inspection Report." The borrower need not sign form FmHA 424-12. The final inspection certification on the bottom of Form FmHA 424-12 may be revised as follows: "I certify that I have inspected the above listed items of development and those shown as 100 percent complete appear to have been completed in accordance with the plans and specifications or other descriptive material. If the final inspection reveals that construction does not meet approved plans and specifications, the loan will not be guaranteed."

§ 1980.330 Borrower eligibility requirements for a loan.

The lender must determine that the applicant meets all the following requirements:

(a) *Citizenship.* Is a natural person (individual) who is a citizen of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or the territories and possessions of the United States, or resides there after being legally admitted for permanent residence or on indefinite parole.

(b) *Legal capacity.* Possesses legal capacity to incur the obligations of the loan.

(c) *Ability and experience.* Possesses ability and experience necessary to carry out the undertakings and obligations required of the applicant in connection with the loan.

(d) *Lack of housing.* Does not own adequate, decent, safe, and sanitary housing for the applicant's use. If the loan is to include funds for a site on which to build, the applicant must be without an adequate site for the proposed dwelling.

(e) *Owner occupant.* Is or will become the owner occupant of the housing with respect to which the loan is made.

(f) *Income.* Has adequate and dependably available income to meet the living expenses, obligations, necessary capital replacements, and repayment of debts including the proposed loan.

(g) *Other credit.* Does not have sufficient resources to provide the housing on the applicant's own account, and cannot obtain credit for that purpose from other sources on terms and conditions the applicant can reasonably be expected to meet without an FmHA guarantee.

(h) *Income level.* Has an above-moderate income.

(1) *Above-moderate income.* An above-moderate income is an adjusted annual income of more than the maximum moderate income limit established for the State as shown in exhibit D to subpart A, part 1822 of this chapter (FmHA instruction 444.1, exhibit D), but not more than $20,000, except for Hawaii, Guam, and Alaska in which the maximum is $24,000, $24,000, and $30,000, respectively.

(2) *Annual income.* This consists of planned income to be received by the applicant, spouse, and all other adults who live, or propose to live, in the dwelling during the next 12 months, or, in the case of a farmer, the period which most accurately reflects the annual cycle of the farmer's operation.

(i) *Income included.* All net farm and nonfarm business income and gross income from wages, salaries, commissions, pensions, social security, welfare, GI bill, fellowships, scholarships, assistantships, unemployment compensation, alimony, and all other sources, except as indicated in paragraph (h)(2)(ii) of this section, must be counted.

(A) Welfare, social security, child support payments, and other payments made on behalf of minors will be included.

(B) All expected overtime and bonus income will be counted.

(C) Projected farm and nonfarm business losses will be considered as "0" in determining annual income.

(ii) *Exempted income.* The following income will not be counted:

(A) Earnings from employment or income from GI bill, fellowships, scholarships, or assistantships for schooling received by a full-time student who is not the applicant or spouse of the applicant.

(B) Proceeds from the sale of equipment, mineral rights, or real estate sold under short-term contract (usually 3 years or less).

(C) Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

(D) Payments received for the care of foster children.

(E) The income of an applicant's spouse not living in the dwelling when:

(*1*) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings, or

(*2*) Papers have not been filed to commence divorce or legal separation proceedings provided the spouse has been living apart from the family for at least 6 months.

(iii) *Deductions from income.* In determining the applicant's annual income the following deductions will be allowed:

(A) A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the applicant's trade, business, or farming operation. The applicant must provide an itemized schedule showing the depreciation claimed, and this schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

(B) A deduction may be made in the same manner as outlined in IRS regulations for necessary business expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving officials, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions are not permitted for the following:

(*1*) Transportation to and from work.

(*2*) Cost of meals incurred on 1-day business trips.

(*3*) Educational expenses except those incurred to meet the minimum requirements of the employee's present position.

(*4*) Fines and penalties for violation of laws.

(C) Income deductions for child care, disabled dependent care, or care of an incapacitated husband or wife may be made for expenditures actually paid to enable the applicant to be gainfully employed. The reason for any deduction must be recorded in detail in the applicant's loan docket. Such a deduction is authorized only if all the following conditions are met:

(*1*) For dependent children under the age of 15 cared for outside the home, the maximum monthly deduction will not exceed $200 for one child, $300 for two children, or $400 for three or more children.

(*2*) Expenses for child care services performed in the home are not limited to the above but are subject to the $400 maximum deduction each month.

(*3*) A deduction not to exceed $400 each month, for incapacitated husband or wife care, or care of disabled dependents age 15 or over who are incapable of self care is authorized only when service is performed in the home.

(*4*) In no case will the aggregate of all deductions for child care, disabled dependent care, or incapacitated husband or wife care exceed $400 per month.

(*5*) Payments for these services must have been to other than close relatives or dependent members of the applicant's household. Close relatives include: Son or daughter and their descendants, stepson or stepdaughter, brother or sister, stepbrother or stepsister, father or mother and their ancestors, stepfather or stepmother, nephew or niece, uncle or aunt, son-in-law or daughter-in-law, father-in-law

or mother-in-law, and brother-in-law or sister-in-law.

(3) *Adjusted annual income.* This is annual income as defined in paragraph (h)(2) of this section, less 5 percent thereof and less an additional $300 for each minor person, excluding the applicant and applicant's spouse, who is a member of the immediate family and lives in the home. The immediate family includes those persons related to the applicant by blood, marriage, or operation of law, such as adoption or legal guardianship.

§ 1980.331 Filing and processing applications.

(a) *Applicant's contact.* Applicants desiring loan assistance as provided in this subpart must file loan applications with an eligible lender.

(b) *Loan priorities.* Applications and preapplications for loan guarantees received by FmHA from eligible lenders will be considered in the order received.

(c) *Veteran preference.* Applications for guarantees received for loans to veterans and from spouses and children of deceased servicemen who died in service during one of the periods described in this paragraph will be given preference by FmHA. A veteran is a person who has been discharged or released from the active forces of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces: (1) During the period April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941, through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955; or (4) for a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

(d) *Filing preapplications and applications.* Lenders may file preapplications as described in paragraph (e) of this section if they desire an expression of FmHA interest before assembling the complete application and request for loan note guarantee or they may present the complete application, in one package, including the material required in paragraphs (e) and (g) of this section.

(e) *Preapplications.* Lenders may file preapplications with the county office. They shall include:

(1) An application form or letter which shall include:

(i) Name, address, telephone number, statement of current annual family income and expenses, net worth, age, and citizenship status of each applicant. If not a citizen of a State or the United States, include evidence of being legally admitted for permanent residence or indefinite parole. The sex, race, and veteran status of the applicant(s) will also be submitted to the county office when provided by the applicant(s).

(ii) Amount of loan request.

(iii) Name of the proposed lender, its address, contact person, and telephone number.

(iv) Brief description of the housing to be financed.

(v) Amount of applicant's equity.

(vi) Anticipated loan maturity.

(2) Comments of substate and State A-95 agencies when the preapplication involves a loan or loans for construction in a subdivision of 10 or more new dwelling units in which HUD, VA, or FmHA has not previously made, insured, or guaranteed a housing loan.

(3) Statement from the applicant certifying that the applicant does not own adequate, decent, safe, and sanitary housing for the use of the applicant's family and the applicant is unable to obtain the required credit without a guarantee at reasonable rates and terms in the community in or near the applicant's location(s) from private or cooperative lending sources who normally make loans for similar purposes and periods of time.

(4) Statement from lender that it will not make the loan as requested by the borrower without a guarantee and that applicant has received, in writing, a warning that the applicant is subject to criminal action if the applicant knowingly and willfully gives false information to obtain a federally guaranteed loan.

(f) *Preliminary determination by FmHA.* If preapplication information indicates the housing will not meet FmHA's minimum standards, the applicant is not eligible, or that guarantee authority is not available, FmHA will so inform the lender with specific reasons and reconsideration rights. (See § 1980.80.) The lender will notify the applicant in writing of all reasons for the decision reached. If the applicant may be eligible, the housing may meet FmHA standards, and loan guarantee authority may be available, FmHA might inform the lender in writing that it may submit a complete application.

(g) *Applications will consist of:* (1) Application for loan on a form approved by the lender, which includes at a minimum the information requested in paragraph (e) of this section. If a preapplication was submitted, it will be sufficient to verify that the information in the preapplication is still valid or provide revisions to the preapplication information.

(2) Architectural or engineering plans for dwelling and site if repair or new construction is planned, including a soils map and foundation design, if applicable.

(3) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(4) Appraisal reports.

(5) Credit report obtained by the lender.

(6) Form FmHA 400-1 "Equal Opportunity Agreement," if construction costing more than $10,000 is planned.

(7) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agencies having jurisdiction including any pollution control agency. (See also § 1980.44 of subpart A of this part.)

(8) A plot plan showing location of house and utilities, topography, landscaping, drainage, and other site development such as driveways, sidewalks, curbs, streets, etc.

(9) Information about the dwelling location with respect to the neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(10) Proposed loan documents between the borrower and lender (See paragraph VIII of Form FmHA 449-35 "Lender's Agreement").

(11) Evidence of compliance with the Privacy Act of 1974:

(i) Form FmHA 410-9 "Statement Required by the Privacy Act." The lender will furnish all applicants two copies of Form FmHA 410-9 at the time an application is filed. The applicant will sign both copies, retaining one and providing one to the lender which becomes a part of the loan file.

(ii) Form FmHA 410-10 "Privacy Act Statement to References." If the lender or FmHA desires to obtain information concerning the applicant from any source, two copies of Form FmHA 410-10 will be provided to the source. The source will sign both copies, retain one, and return the other copy, which becomes a part of the loan file.

(12) Any additional information required by FmHA.

(h) *Use of forms.* Lenders should use their forms, real estate mortgages, security instruments, and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of this subpart.

Administrative. The county supervisor will determine if the material and information submitted are complete and fill out a Form FmHA 444-2 "Single Family Housing Fund Analysis," for the county office file only.

§ 1980.332 FmHA evaluation of applications.

FmHA will evaluate the application. FmHA will make a determination as to whether the borrower is eligible, the proposed loan is for an eligible pur-

pose and there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing by use of Form FmHA 449-13 "Denial Letter." Such notification will include the reasons for denial of the guarantee. If FmHA is able to guarantee the loan, the county supervisor will proceed in accordance with administrative paragraph A of this section.

Administrative. A. When FmHA determines it is able to guarantee the requested loan, the county supervisor will prepare Form FmHA 440-1 in accordance with the forms manual insert (FMI), the county supervisor, except for the last 45 days in the fiscal year (FY), will then contact the State office by phone and request verbal authorization to immediately issue Form FmHA 449-14 to the lender. If the requested authorization is given, the county supervisor will complete Form FmHA 449-14, listing all requirements for such guarantee, sign the form, and forward the original and one copy to the lender. The county supervisor will record the actual date of lender notification on the remaining copy of Form FmHA 440-1 and make such copy a permanent part of the county office loan file. A copy of Form FmHA 440-1 will, in all cases, be mailed to the lender at the same time the form is mailed to the Finance Office for obligation of funding authority. The Finance Office, upon receipt of Form FmHA 440-1, will obligate guarantee authority and forward the original and one copy of Form FmHA 440-57 to the county office. During the last 45 days of each fiscal year and in all other cases when the State office declines phone authorization, the county supervisor will not issue Form FmHA 449-14 until the Form FmHA 440-1 has been mailed to the Finance Office and lender and Form FmHA 440-57 is received from the Finance Office indicating that guarantee authority has been obligated for the requested loan. Under no circumstances will the county office phone the Finance Office for authorization to issue a Form FmHA 449-14.

B. Each State office is authorized to give phone confirmation that guarantee authority is available to cover the loan guarantee requested and authorize the county supervisor to immediately issue Form FmHA 449-14 unless such confirmation would result in the State exceeding 80 percent of its guarantee authority for the current period, or the request for verbal authorization is received during the last forty-five (45) days of the fiscal year.

§ 1980.333 Review of requirements.

(a) *Accepting conditions.* Immediately after reviewing the conditions and requirements in Form FmHA 449-14, and the options listed on the back of the form, the lender should complete and sign the "Acceptance or Rejection of Conditions," and return a copy to the county supervisor. If conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA. These alternatives will be considered and the lender will be advised of FmHA's decision. If altered conditions are acceptable, Form FmHA 449-14 will be revised.

(b) *Canceling commitment.* If the lender indicates in the "Acceptance or Rejection of Conditions" that it desires to obtain a loan note guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a loan note guarantee, the lender should immediately advise the county supervisor.

Administrative. A. The county supervisor will negotiate with the lender any changes, consistent with this regulation, to the initially issued or proposed Form FmHA 449-14.

B. The county supervisor will notify the Finance Office, in accordance with § 1980.61(e), of subpart A of this part, if a commitment is canceled.

§ 1980.334 Conditions precedent to issuance of the loan note guarantee.

(a) *Borrower copies.* The lender will see that the borrower is provided the original or copy, as appropriate, of:

(1) Drawings and specifications.

(2) Plot plan.

(3) Truth-in-Lending and Real Estate Settlement Procedures Act disclosure statements.

(4) Builder's warranty.

(5) Deed and mortgage or security instruments.

(b) *Lender file.* The lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

Administrative. A. *The county supervisor:* 1. Reviews all items required in accordance with § 1980.60 of subpart A of this part.

2. Reviews materials to see that all conditions imposed by Form FmHA 449-14 have been complied with.

3. Makes an onsite inspection of the property if the county supervisor has not already done so. Such inspection will be reflected on Form FmHA 424-12 as indicated in administrative paragraph A of § 1980.329 of this subpart.

4. Under no circumstances will the county supervisor issue Form FmHA 449-34 before Form FmHA 440-57 is received from the Finance Office.

B. To assure that all requirements of this regulation have been met, the District Director may conduct a postguarantee internal audit of selected cases before returning the loan documents to lenders and will document this review in the loan files examined.

§ 1980.335 Issuance of lender's agreement, loan note guarantee and assignment guarantee agreement.

Administrative (with reference to § 1980.61 of subpart A of this part): A. *See § 1980.61(a).* The original Form FmHA 449-35, will be kept in the county office. Paragraphs XC10 and XIIA4 of Form FmHA 449-35 will be crossed out for housing loans. Paragraphs XC 5 and 11 will be completed by adding -0- in the blank for housing loans.

B. *See § 1980.61(b)(1).* Copy(s) of all issued loan note guarantee(s) will be kept in the county office.

C. *See § 1980.61(b)(3).* For reporting purposes when multinotes are issued, the loan to the borrower will be counted as one loan regardless of the number of notes issued.

D. *See § 1980.61(b)(4).* The State director will notify the Finance Office of the transaction.

E. *See § 1980.61(d).* County supervisor signs all forms FmHA 449-13.

F. *See § 1980.61(f). The County supervisor will:* 1. Review Form FmHA 449-19 "Guarantee Fee Report," for completeness.

2. Forward the guarantee fee and original form FmHA 449-19 to Finance Office.

3. Retain in the county office loan file the original of Form FmHA 449-35 and copies of Form FmHA 449-19, Form FmHA 449-34, and Form FmHA 449-36 "Assignment Guarantee Agreement."

§ 1980.336 [Reserved]

§ 1980.337 Loan servicing.

The lender is responsible for loan servicing. See paragraph X of Form FmHA 449-35. Loan servicing is a preventive rather than a curative action. Prompt followup by the lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases.

Administrative. A. The county supervisor is authorized to approve any servicing action consistent with customary and reasonable private sector servicing practices, but not more lenient than subpart A of part 1872 of this chapter (FmHA instruction 465.1).

B. The State director may consult with the National Office on any servicing problem and if it cannot be handled at the State level, the file will be forwarded to the National Office with recommendations.

C. County supervisor: 1. Assists in loan monitoring.

2. When the county supervisor has been notified by the lender of borrower's failure to fulfull any conditions of the loan documents, the county supervisor will forward the notification, the financial reports, and any recommendations through the District Director to the State director indicating the date reports were received in the county office and requesting advice for future loan servicing.

3. Is responsible for establishing an office management system for guaranteed loans in accordance with FmHA instruction 405.1.

D. District Director: 1. Will make sure that the county supervisor obtains from the lender the necessary reports and that the county supervisor transmits them to the State director.

2. Will provide guidance and assistance to the county supervisor if a loan develops into a problem case.

§ 1980.338 Defaults by borrower.

Refer to paragraph XI of Form FmHA 449-35. In case of default, the lender will arrange a meeting with the borrower to resolve the problem. A memorandum of the meeting, individuals who attended, a summary of the problem, and proposed solutions will

be forwarded to the county supervisor to be retained in the loan file.

Administrative. A. If the county supervisor receives a notice of default on a loan, the county supervisor will notify the State director in writing of the details. The county supervisor will notify the lender of decisions reached by FmHA.

B. Purchase of guaranteed portions by FmHA: See lender's agreement and assignment guarantee agreement.

1. The county supervisor monitoring the loan will normally coordinate and process requests for FmHA to purchase when the holder(s) are located in close proximity to the local lender. If holders are located outside the area, the State director of the State where the loan was made may handle the transaction and notify the county supervisor and District Director.

2. The county supervisor will review the material submitted, verify the amounts due the holder(s), and transmit the request by memorandum to the State director with copies to the District Director. Copies of evidence of ownership will be included. Any original evidence of ownership will be retained in the county office. A proposed payment date will be established to calculate the interest due the holder(s).

3. The State director will verify the amounts payable to the holder(s) and assure that all necessary material has been obtained. The State director will request a check to pay the holder(s) on the appropriate data entry form. (See § 1980.63 of subpart A of this part.)

4. If FmHA owns any guaranteed portion of the loan, it will be considered in any future report of loss calculations. A record of any purchase by FmHA will be maintained in the loan file.

§ 1980.339 Liquidation.

Refer to paragraph XII of form FmHA 449-35. If either the lender or FmHA concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults of third-party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled in accordance with paragraph XII of form FmHA 449-35.

Administrative. A. *Paragraph XIIB of Form FmHA 449-35.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan will likely not result in maximum recovery. State directors are authorized to approve lender liquidation plans or exercise the FmHA option to liquidate.

B. *Paragraph XIID of Form FmHA 449-35.* County supervisors are responsible for review and acceptance of accounting reports submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation.

C. *Paragraph XIIE2 of Form FmHA 449-35.* County supervisors are authorized to accept report of loss determinations on Form FmHA 449-30 "Loan Note Guarantee Report of Loss," from lenders and forward them to the State director. The State director will submit Form FmHA 449-30 to the Finance Office for payment of verified losses. The Finance Office forward loss payment checks to lender.

D. *Paragraph XIIE3 of form FmHA 449-35.* Final loss payments will be made within the 60 days required but only after an audit to assure all collateral for the loan has been properly accounted for. State directors are responsible to see that such audits are accomplished in time to be reviewed and accepted or otherwise resolved within the 60-day period. County supervisors may conduct such audits.

§ 1980.340 Protective advances.

(See subpart A, 1980.65.)

Administrative. A. It is not intended that protective advances be made in lieu of additional loans. Prior approval of the county supervisor is required on all protective advances in excess of $500. The county supervisor will consider the following when approving such advances:

1. The total amount of outstanding advances, the amount of those for which approval is requested, the outstanding loan balance, whether the account is current, and, if not, the extent of the delinquencies.

2. The borrower's ability to pay the remaining loan balance and any future advances in accordance with the repayment schedule.

§ 1980.341 Additional loans of advances.

(See subpart A, 1980.66.)

Administrative. Any additional loan that is to be guaranteed will meet the requirements of this regulation including area eligibility. The FmHA may approve additional loans or advances provided the approval official determines there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§ 1980.342 Transfer and assumptions.

(a) *FmHA approval.* All transfers and assumptions must be approved in writing by FmHA.

(b) *Eligibility preference.* Preference will be given to applicants who, after the transfer and assumption are made, will meet the eligibility requirements for the loan.

(c) *Eligible and ineligible.* Available transfer and assumption options to applicants include the following:

(1) The total indebtedness may be transferred to another eligible borrower.

(2) The total indebtedness may be transferred to an ineligible borrower.

(d) *Release of liability.* In any transfer and assumption case, the transferor may be released from liability by the lender with FmHA written concurrence.

(e) *Forms and case numbers.* The assumption will be made on the lender's form of assumption agreement. The assumption agreement must contain the FmHA case numbers of the transferor and the transferee.

(f) *Notations and notices.* It is the lender's responsibility to see that all transfers and assumptions will be noted on the loan note guarantee. The lender must give FmHA a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA indicating whether the loan and security can be properly transferred, the conveyance instruments filed, registered, or recorded, as appropriate, and whether the borrower will be released from liability.

(g) *Holder not consulted.* The holder, if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(h) *Loan note guarantee.* The existing loan note guarantee will continue in effect, so a new loan note guarantee will not be issued. However, as soon as the transfer and assumption have been completed, the lender will so indicate on the original loan note guarantee by inserting a check in the assumption agreement box and inserting the name of the assuming party for those purposes on the loan note guarantee. If the loan note guarantee is held by a holder, the lender will notify the holder of the changes.

Administrative. A. The county supervisor may consent:

1. To all transfer and assumption cases that meet the requirements of this regulation.

2. To the release of the transferor from liability on the loan. The county supervisor may approve or disapprove the transfer and will notify the lender and the appropriate parties of his decision in writing. The loan note guarantee will be endorsed in the space provided on the form.

B. A copy of the assumption agreement will be retained in the county office file and the county supervisor will send a copy to the State director.

§ 1980.343 Eligible transferee—full assumption.

An "eligible transferee" is one who meets the eligibility requirements of this regulation. An eligible transferee is also one who meets the requirements of this regulation except that the housing being transferred is in an area which has ceased to be rural.

(a) *Changes in promissory note or security instrument provisions.* If the assumption arrangement changes the repayment schedule or interest rate, the changes must be approved in writing by the present debtors if they are not to be released from personal liability and by the holder. The interest rate may be any legal rate agreed to by the lender and the assuming parties provided the rate does not exceed rates charged on similar loans in the area. Any new repayment schedule needed to meet the repayment ability of the transferee may cover a period not to exceed 33 years from the date of the transfer. The lender's request for approval to FmHA will be accompanied by:

(1) An explanation of the reasons for the proposed change in the provisions of the promissory note or security instrument.

(2) A statement that the lender's determinations required by paragraph (b) of this section can be made.

(3) Advice as to whether the present debtors will sign an agreement to indicate their continued liability or will be released from personal liability.

(b) *Determinations by lender.* Before the transfer and assumption can be approved, the lender must determine that all of the following conditions exist or can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will acquire all of the property securing the guaranteed loan balance.

(3) The transferee cannot acquire the security property without the guaranteed loan credit.

(4) The market value of the security property being acquired by the transferee is at least equal to the amount of the secured indebtedness against it.

(5) The priorities of the existing lien or liens securing the guaranteed loan will be maintained or improved.

(6) The transferee appears to have the ability and desire to pay the amount to be assumed.

(7) Proper hazard insurance will be obtained.

(8) The transaction can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate and legally permissible.

(c) *Closing transfer and assumption.* As soon as the lender finds that it will be able to make the determinations required in paragraph (b) of this section and has received FmHA's approval, the lender may proceed with closing the transfer and assumption transaction. The closing will include, but will not be limited to, obtaining execution and delivery of the conveyance instruments and the assumption agreement, compliance with any legal requirements, and the filing, registration, or recordation of said conveyance instruments, as appropriate and legally permissible.

(d) *Material furnished to FmHA after closing.* Immediately after the transfer and assumption have been closed, the lender will furnish to FmHA:

(1) Two conformed copies of the executed assumption agreement.

(2) A statement showing:

(i) What changes, if any, have been made in the provisions of the promissory note or security instruments.

(ii) That all of the conditions and requirements of paragraph (b) of this section have been met.

(iii) That insertions have been made on the original loan note guarantee as required in § 1980.342(h).

(iv) Whether the present debtors have been released from personal liability or have signed an agreement of continued personal liability.

Administrative. A. *Concurrrence of FmHA.* If the county supervisor approves the proposed transfer, including any proposed changes in the promissory note or security instrument provisions, the county supervisor will so advise the lender in writing and the lender may proceed with the transfer and assumption.

B. *Conformed copies—sent to and checked by FmHA county supervisor.* When the county supervisor receives the two conformed copies of the executed assumption agreement and the original statement from the lender as required in paragraph (d) of this section, the county supervisor will examine them to see whether they are proper in all respects.

(1) If county supervisor finds any errors or ommissions in the conformed copies, the county supervisor will return the defective material to the lender so that the errors or omissions may be corrected. If the original assumption agreement contains the same defects, it will first have to be corrected and the corrections initialed by the assuming parties and the lender and also by the present debtors if they will remain personally liable.

(2) If the county supervisor finds the material to be in proper order, either before or after correction, the county supervisor will notify the Finance Office in order that the Finance Office records may be adjusted accordingly.

§ 1980.344 Ineligible transferee—full assumption.

An "ineligible transferee" is one that does not meet the eligibility requirements of this regulation.

(a) *Continued liability of present debtors.* Since the terms of the promissory note will be changed in the assumption agreement, the present debtors will be required to sign the agreement of continued liability on the bottom of the assumption agreement if their continued personal liability is required because the assumption agreement repayment period is more than 5 years or for any other reason.

(b) *Interest rate and term of assumption.* The interest rate may be any legal rate agreed to by the lender and the assuming parties provided the rate does not exceed rates charged on similar loans in the area. The term in these cases cannot exceed 5 years except it may be up to 15 years if:

(1) The present debtors are not released from personal liability.

(2) FmHA makes a written determination that a period longer than 5 years is necessary to protect the financial interests of FmHA as guarantor.

(c) *Determinations by lender.* Before the transfer and assumption are consummated, the lender must obtain all holders' and FmHA's approval of the transaction. As a basis for obtaining that approval, the lender must furnish to FmHA a completed but unexecuted copy of the transfer document and a statement showing that the following determinations have been made:

(1) That the transferee is not an eligible applicant.

(2) That the proposed transfer and assumption appear to be the best method for most adequately protecting the financial interests of the lender and FmHA.

(3) That the market value of the security property to be transferred is equal to or more than the unpaid balance on the guaranteed loan plus any prior liens, or that the financial situation of the transferee is such that any difference could be readily collected.

(4) That the determinations, conditions and requirements of § 1980.343(b) (2), (5), (6), (7), and (8) are made.

(5) That the proposed term of the assumption is necessary and meets the requirements of paragraph (b) of this section.

(6) Whether the present debtors will sign an agreement of continued liability or will be released from personal liability.

(d) *Closing transfer and assumption.* Upon receipt of FmHA's approval letter, the lender may proceed with closing the transfer and assumption transaction. The closing will include, but will not be limited to, obtaining execution and delivery of the conveyance instruments and the assumption agreement, compliance with any legal requirements, and filing, registration, or recordation of said conveyance instruments, as appropriate.

(e) *Material furnished to FmHA after closing.* Immediately after the transfer and assumption have been closed, the lender will furnish to FmHA:

(1) Two conformed copies of the executed assumption agreement.

(2) A statement showing:

(i) That all of the conditions and requirements have been met in accordance with the approval letter issued by FmHA.

(ii) That the insertions have been made on the original loan note guarantee as required in § 1980.342(h).

(iii) Whether the present debtors have been released from personal liability or have signed an agreement of continued liability.

Administrative. A. *Approval by FmHA.* If the county supervisor approves the lender's determinations and agrees that the transfer and assumption should be made as proposed, the county supervisor will send a letter of approval to the lender. If the assumption term exceeds the 5-year limitation in paragraph (b) of this section, the letter will contain FmHA's express determination that the longer term is necessary to protect its financial interest as guarantor. If FmHA determines that it cannot approve the pro-

posed transaction, it will inform the lender in writing of the reasons. If the lender satisfies FmHA's objections, it may submit the matter for reconsideration.

B. *Conformed copies—Sent to and checked by FmHA county supervisor.* The procedure set forth in § 1980.343 administrative paragraph B of this subpart will be followed in examining and handling the material furnished under paragraph (e) of this section.

§§ 1980.345-1980.400 [Reserved]

General administrative. A. *Office of the General Counsel (OGC).* In performing the FmHA functions, the advice and assistance of OGC may be sought and followed on any legal matter. However, in loanmaking, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA has any questions concerning the lender's resolution of these matters, only FmHA may consult with OGC.

B. *Delegation of authority.* The State director may delegate to State office rural housing and support staff those administrative duties and responsibilities set forth in the administrative sections of this subpart.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

Dated: September 29, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-28371 Filed 10-6-78; 8:45 am]

[3410-34-M]

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 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Pork and Pork Products From Countries Where African Swine Fever Exists or is Reasonably Believed To Exist and Change in Disease Status of Haiti

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation of pork and pork products from countries where African swine fever, a contagious and infectious disease of swine, exists, to include countries where African swine fever is reasonably believed to exist, under conditions constituting a risk of introduction or spread of the disease into the United States. This document also designates Haiti as a country in which the contagion of African swine fever is believed to exist, under conditions constituting a risk of introducing African swine fever into this country. The intended effect of this amendment is to restrict the entry into the United States of pork and pork products from countries where African swine fever is reasonably believed to exist.

EFFECTIVE DATE: October 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. James D. Roswurm, USDA, APHIS, VS, Room 819, Federal Building, Hyattsville, Md. 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION: African swine fever is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus of African swine fever is highly virulent and may be present in pork and pork products originating in countries where the disease exists. Such products constitute a grave danger to healthy swine. The only known practical method of destroying the disease virus in pork and pork products is by heat treatment.

In order to protect domestic swine from the effects of this disease, it is necessary to control the entry of all pork and pork products which may contain active African swine fever virus. On occasion, situations exist where there is reason to believe that African swine fever exists in a country, but a definitive diagnosis of the disease has not been made or if made is not reported expeditiously to the United States to allow appropriate measures to be taken to prevent the introduction or spread of the disease into this country. The present regulations only provide for restricting the importation of pork and pork products into the United States from countries in which the disease is known to exist. Therefore, it is necessary to amend the regulations in 9 CFR 94.8 to restrict the entry of pork and pork products into the United States from countries where African swine fever is reasonably believed to exist when such action is necessary to prevent the risk of introducing African swine fever into this country.

A reasonable determination of the probable existence of African swine fever within a country can be made by the Administrator, on a case by case basis, upon the following factors:

1. When a country allows the importation of host animals, pork or pork products or vectors of the disease from a country affected with African swine fever under conditions less stringent than those prescribed for importing host animals, pork or pork products or vectors of the disease into the United States from a country affected with African swine fever; or

2. When a country allows the movement or use of African swine fever virus or cultures under conditions less stringent than those prescribed for similar movements or use into or within the United States; or

3. The proximity of a country to another country or countries with known outbreaks of African swine fever; or

4. A country's lack of a disease detection, control or reporting system capable of detecting or controlling the disease and reporting it to the United States in time to allow the United States to take appropriate action to prevent the introduction of African swine fever into this country; or

5. Any other fact or circumstance found to exist which constitutes a risk of introduciton of the disease into the United States.

It is imperative that the entrance of pork and pork products into the United States from such countries be controlled as quickly as possible.

Section 94.8 of title 9 of the Code of Federal Regulations was amended to add the Dominican Republic as a country in which African swine fever exists on July 11, 1978, because of the confirmation of African swine fever in swine herds in that country. Since then, extensive outbreaks of the disease have occurred in the Dominican Republic.

Reports have been received that shipments of pork products, including smoked ham, salami, bologna, and sausage, move into Haiti from the Dominican Republic. Further, it is reported to be a common practice for Dominican Republic and Haitian officials stationed at border points on the Haiti-Dominican Republic international boundary to barter various items, including livestock, back and forth across the border. Consequently, there is a strong probability that swine from the Dominican Republic have moved into Haiti. Additionally, excessive death losses are reported to have occurred in swine on both sides of the Haiti-Dominican Republic international boundary and the Haitian government has been unable to either confirm the existence of the disease in the country of deny its existence.

On the basis of the available evidence, the Department has determined that African swine fever can be reasonably believed to exist in Haiti. Therefore, in order to prevent the introduction or dissemination of the

contagion of African swine fever into the United States, the Department is designating Haiti in 9 CFR 94.8 as a country where it is reasonable to believe that African swine fever exists and restricting the importation of pork and pork products from that country into the United States.

This designation restricts the entry into the United States of pork and pork products from Haiti to pork and pork products which have been commercially sterilized by heat in hermetically sealed containers, or which are allowed controlled entry into the United States for further processing by heat in accordance with 9 CFR 94.8.

Accordingly, Title 9, Part 94, Code of Federal Regulations, is hereby amended in the following respects:

1. The title of § 94.8 is amended to read:

§ 94.8 Pork and pork products from countries where African swine fever exists or is reasonably believed to exist.

* * * * *

2. In § 94.8, the colon is deleted and the following is added to the end of the introductory paragraph: "* * * or the administrator has reason to believe the disease exists because of the following factors:

"1. When a country allows the importation of host animals, pork or pork products or vectors of the disease from a country affected with African swine fever under conditions less stringent than those prescribed for importing host animals, pork or pork products or vectors of the disease into the United States from a country affected with African swine fever; or

"2. When a country allows the movement or use of African swine fever virus or cultures under conditions less stringent than those prescribed for similar movements or use into or within the United States; or

"3. The proximity of a country to another country or countries with known outbreaks of African swine fever; or

"4. A country's lack of a disease detection, control or reporting system capable of detecting or controlling the disease and reporting it to the United States in time to allow this country to take appropriate action to prevent the introduction of African swine fever into this country; or

"5. Any other fact or circumstance found to exist which constitutes a risk of introduction of the disease into the United States."

3. In § 94.8, following the introductory paragraph, the name of Haiti is added after the reference to "France" and before "Italy."

4. In § 94.8 (a) and (c), the phrase "where African swine fever exists," is deleted and the phrase "listed in this section" is inserted in lieu thereof.

(Sec. 2, 32 Stat. 792, as amended (21 U.S.C. 111); 37 FR 28464, 28477; 38 FR 19141.)

This amendment is of an emergency nature and must be made effective immediately to protect domestic swine against the introduction of African swine fever from Haiti. It excludes intransit shipments of pork and pork products that are aboard a carrier moving to the United States at the time of issuance hereof. Such intransit shipments, upon arrival in the United States, shall either be allowed entry or be disposed of only under such specific requirements and in such a manner as the Administrator may determine, in each specific case, to be necessary and adequate to safeguard against the introduction or dissemination of African swine fever into the United States.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

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.

Done at Washington, D.C., this 3d day of October 1978.

PIERRE A. CHALOUX,
Deputy Administrator, Veterinary Services.

[FR Doc. 78-28370 Filed 10-6-78; 8:45 am]

[3128-01-M]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION*

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of interpretations.

SUMMARY: Attached are the interpretations issued by the Office of the General Counsel of the Department of Energy under 10 CFR Part 205, subpart F, during the period September 1, 1978, through September 30, 1978. Also attached is a modification of interpretation 1978-33, issued to the Independent Oil Compounders Association on June 6, 1978. See appendix below for subjects and interpretations issued.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of the General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 1121, Washington, D.C. 20461, 202-566-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR part 205, subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977.

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The interpretations published below are not subject to appeal.

Also published today is interpretation 1978-33 which was modified in accordance with 10 CFR 205.85(d). The modification does not alter the decision reached in interpretation 1978-33.

Issued in Washington, D.C., October 3, 1978.

EZRA C. LEVINE,
Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

APPENDIX

Number, To, Date, and Category

1978-57, Yellow Cab Co. of Philadelphia; Gulf Oil Co.—United States, September 20, Allocation.
1978-58, Campbell H. Elkins and El Ran, Inc., September 22, Price.
1978-59, E. E. Ryall, September 26, Allocation.
1978-33M, The Independent Oil Association, August 8, Allocation.

INTERPRETATION 1978-57

To: Yellow Cab Company of Philadelphia, Gulf Oil Company—U.S.
Date: September 20, 1978.
Rule Interpreted: 10 CFR 210.62(a).
Code: GCW-AI—Normal Business Practices, Supplier/Purchaser Relationship.

* EDITORIAL NOTE.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

FACTS

Gulf Oil Company—U.S. (Gulf), a division of Gulf Oil Corporation, has for each month in 1972 and subsequent thereto sold motor gasoline to Yellow Cab Company of Philadelphia (Yellow Cab), the largest taxicab company operating in the Philadelphia metropolitan area. Yellow Cab is a wholesale purchaser-consumer [1] and its relationship with Gulf for the purchase of motor gasoline is therefore subject to the provisions of the Mandatory Petroleum Allocation Regulations.

Prior to April 1, 1978, and throughout 1972, the payment terms applicable to the supply of motor gasoline by Gulf to Yellow Cab were cash on delivery (c.o.d.) at Yellow Cab's delivery locations. Pursuant to these terms, Yellow Cab paid by check a total of XXXXXXXXXX on March 29 and 31, 1978, for deliveries of motor gasoline made on those dates.

On April 1, 1978, Yellow Cab filed a petition for arrangement under Chapter XI of the Federal Bankruptcy Act with the United States District Court for the Eastern District of Pennsylvania. In that proceeding, the bankruptcy judge ordered:

"that the bank accounts presently maintained by the Debtor [Yellow Cab] shall be closed, and all funds presently on deposit to the credit of the Debtor in said accounts shall be transferred to new accounts to be opened in said banks, or certain of said banks, entitled 'YELLOW CAB COMPANY OF PHILADELPHIA, Debtor-in-Possession.'"

As a result of this order, Yellow Cab lost all authority to pay out any sums of money for indebtedness accrued prior to April 1, 1978, except through a plan of arrangement or liquidation. Accordingly, the drawee bank dishonored the checks totaling XXXXXXXXXX which Yellow Cab had used as payment to Gulf for the March 29 and 31 deliveries of motor gasoline. Gulf, however, continued to supply Yellow Cab with its product allocation while demanding that the cab company make arrangements to pay the outstanding debt. On May 19, 1978, Gulf concluded that the necessary arrangements were not being implemented by Yellow Cab and therefore gave notice that all deliveries of motor gasoline would be terminated commencing May 25, 1978.

At the request of Yellow Cab, the United States District Court for the Eastern District of Pennsylvania per a bankruptcy judge granted on May 25, 1978, a temporary restraining order against Gulf directing the firm to continue supplying gasoline to Yellow Cab. Subsequently, the order was amended to provide:

"At such time as a final response of the United States Department of Energy to the Request for Interpretation has been issued, it shall be filed of record and the parties hereto or either of them, shall then be permitted to seek such further action with respect to continuation or termination of this injunction as they deem appropriate."

In the request for interpretation filed jointly by Yellow Cab and Gulf, the taxicab company contends that the supplier/purchaser relationship between the two parties should be preserved since there has been no breach of the normal business practices rule. Yellow Cab further argues that upon approval by creditors of an arrangement of debts, Gulf may subsequently be compensated in whole or in part for the outstanding debt, depending on its position with respect to the other creditors. Gulf, however, maintains that Yellow Cab's failure to pay for the product delivered on March 29 and 31 was not in compliance with the normal business practices rule, thereby warranting suspension of deliveries of motor gasoline until such time as Yellow Cab makes payment for its outstanding debt.

Presently, in accordance with the order from the District Court, Gulf is supplying gasoline to Yellow Cab on a c.o.d. basis, and Yellow Cab is making payment by certified check.

ISSUE

Does Yellow Cab's failure to meet its payment obligations of March 29 and 31 constitute a breach of the normal business practices rule in 10 CFR 210.62 warranting a suspension in the delivery of motor gasoline by Gulf?

INTERPRETATION

For the reasons set forth below, it has been concluded that Gulf may not suspend its deliveries of motor gasoline to Yellow Cab since there has not been a substantial failure to arrange proper payment by Yellow Cab for deliveries of that product.

The Mandatory Petroleum Allocation Regulations, set forth at 10 CFR Part 211, were adopted on January 14, 1974, 39 FR 1924 (January 15, 1974), and were intended to apply to the allocation of "crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States" (10 CFR 211.1). Those regulations were adopted to implement the statutory mandate of Section 4(a) of the Emergency Petroleum Allocation Act of 1973 (the EPAA), as amended, Pub. L. No. 93-159 (November 27, 1973).[2]

Subpart F of the Mandatory Petroleum Allocation Regulations provides for the mandatory allocation of "all motor gasoline produced in or imported into the United States." 10 CFR 211.101(a).[3] According to § 211.105(a) of that subpart, unless specified otherwise, the provisions of §§ 211.9–211.13 apply to supplier/purchaser relationships involving motor gasoline. Section 211.9(a)(1) directs the maintenance of certain supplier/purchaser relationships and provides:

"Each supplier of an allocated product shall supply all wholesale purchaser-resellers and all wholesale purchaser-consumers which purchased or obtained that allocated product from that supplier during the base period as specified in Subparts D through K of this part."

The applicable "base period" for motor gasoline as set forth in § 211.102 is "the month of 1972 corresponding to the current month." Thus, pursuant to § 211.105 (with its reference to § 211.9(a)(1)) suppliers of motor gasoline must maintain their supplier/purchaser relationships with wholesale purchaser-consumers in effect during the 1972 base period, utilizing the allocation levels provided in § 211.103.

However, the allocation regulations do not require a supplier to sell allocated products to purchasers who do not arrange proper credit or payment for those products. In that regard, § 210.62(a) provides in part:

"Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product . . . *Nothing in this paragraph shall be construed to require suppliers to sell to purchasers who do not arrange proper credit or payments for allocated products, as customarily associated with that class of purchaser during the base period* (for seasonal credit), *or on May 15, 1973* (for other credit terms)." [Emphasis added.]

In light of the goals and purposes of the Mandatory Petroleum Allocation Regulations, the issue of whether a purchaser's failure to pay a supplier for deliveries of allocated product will result in a termination of a supplier/purchaser relationship will be scrutinized on a case by case basis. That examination will focus upon whether or not there has been a "substantial" deviation from normal credit practices to the detriment of the supplier. In a situation where the supplier alleges that the purchaser has failed to properly arrange credit and payment for sales of an allocated product, great consideration will be given to the magnitude and duration of harm to the supplier. Minor and infrequent delays in payment over an extended period of time do not usually warrant a total cessation of product deliveries. However, where a purchaser has exhibited a pattern of late payments or has failed to make payments altogether to the disadvantage of the supplier, termination of the supplier's obligation to supply that purchaser may be permissible. See *Mack C. Colt, Inc.*, Interpretation 1978-56, 43 FR 40209 (September 11, 1978).

In the case presently under consideration, Yellow Cab failed to make proper payment to Gulf for motor gasoline delivered on March 29 and 31 as a result of an order by a Federal bankruptcy judge directing that the bank accounts of Yellow Cab, effective April 1, 1978, "shall be closed." That order originated from a proceeding for arrangement under Chapter XI of the Federal Bankruptcy Act with respect to the taxicab business operated by Yellow Cab in and around Philadelphia. The judge further ordered that Yellow Cab be designated a "Debtor-in-Possession," and from April 1, 1978, forward, be directed to handle all future obligations on a priority basis as expenses of administration. Since that time Yellow Cab has made all payments for its allocation of gasoline on a timely basis and in accordance with the normal business practices in effect between Yellow Cab and Gulf. Thus, although Yellow Cab's checks totaling $15,391.10 were not honored by its bank upon presentment by Gulf on or after April 1, 1978, on all other occasions before and after that date Yellow Cab has conformed substantially with the terms of its agreement with Gulf and has thus complied with

[1] Wholesale purchaser-consumer is defined in 10 CFR 211.51 to mean: "Any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which * * * purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971."

[2] 15 U.S.C. § 751 *et seq.* (1976).

[3] Adopted January 5, 1974, 39 FR 1924 (January 15, 1974).

the normal business practices rule of § 210.62.[4]

After evaluating the facts presented by Gulf and Yellow Cab, the DOE has concluded that there are insufficient grounds for allowing Gulf to terminate or to temporarily suspend deliveries of motor gasoline to Yellow Cab.[5] This conclusion takes into consideration the lack of previous disruptions in the business relations of the two parties, as well as the priority status assigned by the bankruptcy judge to all future obligations incurred by Yellow Cab for purchases of motor gasoline. So long as Gulf is delivering product to Yellow Cab on a c.o.d. basis and is receiving certified checks for its product, it is not in any way disadvantaged by the continuance of this supplier/purchaser relationship. In addition, Gulf is only temporarily prevented from obtaining compensation for the product it delivered to Yellow Cab on March 29 and 31 until such time as a plan of arrangement is agreed upon. At that point, Gulf may be compensated in full or in part depending upon the number of other existing debts and the amount of funds available to pay them.

Based on the foregoing, a termination of Gulf's supplier/purchaser relationship with Yellow Cab, whether temporary or permanent, is not in accordance with the goals of the EPAA and the Mandatory Petroleum Allocation Program.[6] To permit a suspension or cessation of product deliveries by suppliers for occasional payment delays or other minor business difficulties could foster instability and uncertainty among all purchasers as to the security of their supplies. Accordingly, based on the facts presented at this time by Gulf and Yellow Cab, Gulf may not suspend or terminate deliveries of motor gasoline to Yellow Cab.[7]

INTERPRETATION 1978-58

To: Campbell H. Elkins and El Ran, Inc.
Date: September 22, 1978.
Rules Interpreted: 10 CFR 212.54 and 212.72.
Code: GCW-PI—Definition of Property.

FACTS

In August of 1977, Campbell H. Elkins (Elkins), a crude oil producer, acquired the production rights to oil and gas leases from Westland Energy Corporation (Westland), in a single lease instrument.[1] The leased area had formerly been leased to Sinclair Oil and Gas Company (Sinclair), which obtained working interest rights in 1967 and 1968 pertaining to a tract of land of approximately 40 acres. Sinclair failed to drill any producing wells on the tract, and all rights thereto were released in 1972 by Atlantic Refining Company, successor to Sinclair.

In 1974, the undivided interest owners leased their interest in the subject tract to Macdonald Oil Corporation and its successor Adobe Oil and Gas Corporation. Both companies failed to exercise their rights in the lease, and in 1977, Westland, the present lessee of the tract, exercised the right to assign the lease to Elkins.

El Ran, Inc. (El Ran), a crude oil producer, will operate the crude oil wells which Elkins proposes to drill on the leased acreage.

According to Elkins, crude oil was not produced from the leased area in 1972, and is not presently being produced from the leased area.

ISSUE

1. May crude oil produced from a property that did not produce crude oil in 1972, be treated as "new" crude oil pursuant to 10 CFR Part 212, Subpart D?

2. When would the Elkins property qualify as a stripper well property pursuant to 10 CFR 212.54?

INTERPRETATION

From the information presented by Elkins, it has been determined that the leased acreage acquired by Elkins in 1977, is a single property which did not produce crude oil in 1972.

The term "property" is defined in 10 CFR 212.72, in relevant part, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest." The meaning of the terms "property" and "lease" was reviewed in detail by the Department of Energy (DOE) in Ruling 1977-1, 42 FR 3628 (January 19, 1977), in which it was concluded that, for price control purpose in those cases involving an oil and gas lease, "property" is the right to produce crude oil from specific leased premises, rather than the right only as vested in a particular lessee. Thus, since Elkins acquired the right to produce on the leased acreage, which was historically treated as a single tract since the original conveyance to Sinclair, Elkins acquired a "property" for purposes of 10 CFR Part 212, Subpart D. *See e.g. Meridian Oil Corp.,* Interpretation 1977-46, 43 FR 1481 (January 10, 1978).

Moreover, all crude oil produced from the property is "new" crude oil subject to the upper tier ceiling price rule in 10 CFR 212.74. "New crude oil," defined in 10 CFR 212.72, generally consists of the incremental crude oil *production above the property's historic base production control level (BPCL)*[2] (if any), less any current cumulative deficiency. If *no* crude oil was produced from a tract in 1972, the BPCL is zero. Therefore, with respect to the Elkins property, all crude oil production will qualify as upper tier crude oil, as defined in 10 CFR 212.74.

"Average daily production" is defined in 10 CFR 212.54(c) as:

In its submission, Elkins also requests guidance concerning the qualification of the property as a stripper well property. "Stripper well property" is defined in 10 CFR 212.54(c) as:

"a 'property' whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972."

"the qualified maximum total production of crude oil (excluding condensate recovered in non-associated production) produced from a property, divided by a number equal to the number of days in the 12-month qualifying period times the number of wells that produced crude oil (excluding condensate recovered in non-associated production) from that property in that 12-month qualifying period. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout the 12-month qualifying period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production."

Thus, the property would qualify as a stripper well property if crude oil is produced from the property at the stripper well levels of less than 10 barrels per well per day for 12 consecutive months. *See e.g. H.H. Weinert Estate,* Interpretation 1978-9, 43 FR 15620 (April 14, 1978); *Rustex Oil, Inc.,* Interpretation 1978-5, 43 FR 12852 (March 28, 1978). Upon its certification as a stripper well property, crude oil produced from the Elkins property is eligible to receive "exempt" prices as set forth in 10 CFR 212.54(a).

INTERPRETATION 1978-59

To: E. E. Ryall.
Date: September 26, 1978.
Rules Interpreted: 10 CFR 211.9; 211.51.
Code: GCW - AI—Supplier/Wholesale Purchaser-Reseller Relationship.

FACTS

Since June 1, 1970, E. E. Ryall (Ryall) has operated as a consignee of petroleum products (principally motor gasoline), allocated under the Mandatory Petroleum Allocation Regulations, for Texaco, Inc. (Texaco), in

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[4] Neither Yellow Cab nor Gulf has alleged any other difficulties with respect to their business dealings.

[5] The DOE has not addressed the issue of whether the facts presented would justify an alteration of credit terms since neither party raised that question in their interpretation request. The agency has previously considered that issue in *Crystal Oil Company,* 1 FEA ¶20,161 (November 8, 1974).

[6] It should be noted that in § 4(b) (1) (B) of the Emergency Petroleum Allocation Act, the Congress expressly directed that the mandatory petroleum allocation regulations "to the maximum extent practicable" provide for "maintenance of all public services * * * (including transportation facilities and services which serve the public at large)." The conclusion reached in this interpretation, with respect to the supply obligation of Gulf to Yellow Cab—a provider of transportation services to the public—is fully consistent with, and in furtherance of, this statutory objective.

[7] This interpretation relied upon the facts submitted by the parties on July 13, 1978, and does not constitute a permanent bar to any future termination of the supplier/purchaser relationship should it be warranted by a change in the facts.

[1] This leased acreage is located in the Southeast Quarter, Section 34, Township South, Range East in Roosevelt County, New Mexico.

[2] "Base production control level" means: * * *

"(2) with respect to months commencing after January 31, 1976, except as provided in § 212.76, either: (A) the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or (B) if the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(1) [sic], the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned." (10 CFR 212.72)

Vero Beach, Florida. Under the terms of the Consignment Agreement (Agreement), Ryall obtains motor gasoline and other products from Texaco storage facilities for delivery to retail outlets in and around Vero Beach at prices and terms fixed by Texaco. Title to the products remains with Texaco. The Agreement consists of Texaco standard Form S-82 as amended by standard Form S-368.

The Agreement provides that Ryall, as a consignee, is free to sell to any purchasers he selects for cash or properly authorized credit. Ryall may also extend credit to customers on his own account without authorization from Texaco, but in such cases becomes responsible to Texaco for the amount of the sale.

The Agreement further requires Ryall to keep records of all sales, deliveries, inventory, and receipts, which are subject to audit by Texaco. He is required to pay for any shortages of products consigned to him by Texaco if such shortages are disclosed in an audit by Texaco. He carries liability insurance on his business operations, which also covers the petroleum products consigned to him by Texaco, even though title to these products remains with Texaco. Ryall has a capital investment in trucks and operating equipment, and uses his own equipment to pick up and deliver Texaco products. He carries health and life insurance for his employees. Texaco does not withhold Federal income or Social Security taxes on the commissions it pays to Ryall.

Since June 1973, Texaco has made direct deliveries to three stations which were served by Ryall during each month of 1972—the base period for motor gasoline.

ISSUE

Is Ryall a wholesale purchaser-reseller as that term is defined in 10 CFR 211.51?

INTERPRETATION

It has been concluded that Ryall, a consignee agent of Texaco, operating pursuant to the Consignment Agreement mentioned above, is a wholesale purchaser-reseller as defined in 10 CFR 211.51.

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as:

"any firm which purchases, receives through transfer, or otherwise obtains (*as by consignment*) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form." (Emphasis added.)

The use of the term "as by consignment" in the definition of wholesale purchaser-reseller was interpreted in Ruling 1975-8, 40 FR 30037 (July 17, 1975). In that Ruling, it was determined that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition of wholesale purchaser-reseller solely on the ground that they fail to take legal title to the allocated product. Those consignees which have a substantial degree of operational independence in conducting their business of transferring and selling a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers pursuant to § 211.51. These firms are subject to the same benefits and obligations of the Mandatory Petroleum Allocation Program which apply to other wholesale purchaser-resellers.

According to Ruling 1975-8, a consignee that qualifies under 10 CFR 211.51 as a wholesale purchaser-reseller will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's product; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier.

The pertinent facts in this case are identical to those in another Texaco consignee case, *Warren Stevenson*, Interpretation 1978-46, 43 FR 34437 (August 4, 1978). In *Stevenson* it was noted at 34438:

"Although the Agreement specifies the status of its distributors as that of 'consignee-agent,' this nomenclature is not determinative of Stevenson's status. It is only necessary that the consignee meet most of the four qualifications contained in Ruling 1975-8 to satisfy DOE that the 'consignee' is in fact a wholesale purchaser-reseller as defined in 10 CFR 211.51."

Ryall, like Stevenson, has appropriate facilities and equipment for conducting his business, is responsible for the internal financial management and physical and administrative operations of his business, is responsible for certain of the expenses and liabilities arising from and connected with the business of transfer and sale of the products, and has independent control to enter into and to terminate supply relationships.

An additional element discussed in *Stevenson* which has a bearing on this case is the fact that Texaco's consignee agreement with Ryall, like that in *Stevenson*, is substantially the same as agreements analyzed in *National Association of Consignees, Inc.*, Interpretation 1975-19, 42 FR 23736 (May 10, 1977) and *John Hattenhauer*, Interpretation 1977-20, 42 FR 39963 (August 8, 1977). In those two interpretations, also involving Texaco consignee agreements, it was determined that under the terms of the consignee agreement, the Texaco consignees retained sufficient functional autonomy in the distribution and sale of Texaco products to qualify as wholesale purchaser-resellers.

In light of the standards set forth in Ruling 1975-8, as interpreted in *Stevenson*, *National Association of Consignees, Inc.*, and *Hattenhauer*, and the facts presented by Ryall, it has been determined that Ryall is a wholesale purchaser-reseller as defined by 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations.

In addition, Ryall's request for interpretation raises questions involving Texaco's direct supply of three motor gasoline retail outlets that were supplied by Ryall during the base period. Although, based on the facts presented by Ryall, it is clear that pursuant to § 211.9 Ryall is the base period supplier of the three retail outlets (since Ryall supplied them with motor gasoline during each month of 1972), it is also clear that the retail outlets need not purchase their base period allocation of product from that firm. *See Swann Oil, Inc.*, Interpretation 1974-19, 42 FR 25657 (May 18, 1977). Thus, the three retail outlets having a supplier/purchaser relationship with Ryall may elect to purchase motor gasoline from Ryall, Texaco, or any other supplier (subject, of course, to the provisions of § 211.10(g)(7) concerning surplus product). However, the only assured source of supply for these three retail gasoline stations is their base period supplier, Ryall. Texaco's supply of the three retail outlets that are not its base period purchasers does not unilaterally shift the § 211.9 supply obligation for those outlets from Ryall to Texaco. Texaco must continue to supply or offer to supply Ryall with its entire base period allocation of motor gasoline, including an amount representing base period entitlement of product for the three retail stations. *See John Hattenhauer, supra.*

Accordingly, Ryall is a wholesale purchaser-reseller as defined in § 211.51, and is entitled to receive its entire adjusted base period allocation of product from Texaco.

INTERPRETATION 1978-33M

To: The Independent Oil Compounders Association.
Date: August 8, 1978.
Rule Interpreted: 10 CFR 212.31.
Code: GWC-PI—Definitions of Refiner, Reseller, and Retailer.

FACTS

The Independent Oil Compounders Association (IOCA) is an association representing "independent compounders," that is, firms engaged in the sale of finished lubricants produced by blending and compounding lubricant oil base stocks. For purposes of this interpretation, IOCA has defined independent compounders as those firms which: (1) Have less than $75 million in annual sales of finished lubricants; (2) are neither owned nor controlled by a firm which is a producer or refiner of crude oil and which also refines lubricant base oil stocks; and (3) blend or compound lubricant oil base stocks purchased from crude oil refineries to produce finished lubricants, repackage and resell lubricants previously finished by crude oil refineries, or simply resell such previously finished lubricants without repackaging them.

In its request for interpretation, IOCA seeks a determination of whether the refiner price rule, contained in 10 CFR Part 212, Subpart E, or the reseller/retailer price rule, contained in 10 CFR Part 212, Subpart F, applied to sales of finished lubricants by independent compounders during the period when finished lubricants were subject to the Mandatory Petroleum Price Regulations.[1]

This determination turns on the definitions of "refiner," "reseller," and "retailer"

[1] Finished lubricants and lubricant oil base stocks were deleted from the definition of covered products effective September 1, 1976, in 41 FR 30096 (July 22, 1976). A previous interpretation was issued to IOCA dealing with the extent to which finished lubricants were subject to the price regulations prior to September 1, 1976. *See Independent Oil Compounders Association*, Interpretation 1977-50, 43 FR 1484 (January 10, 1978). This interpretation, however, did not reach the question of whether independent compounders were refiners or resellers and retailers for purposes of the price regulations

in 10 CFR 212.31. Pursuant to these definitions, it must be determined whether independent compounders "substantially change" the form of the lubricant oil base stocks they process, in order to determine which price rule is applicable. This is because refiners are those firms which blend and substantially change covered products, whereas resellers and retailers do not. To assist in this determination, IOCA has supplemented its request for interpretation with technical information on the basic processes by which the two main forms of finished lubricants—lubricating oils and greases—are produced. This information is summarized below.

In producing finished lubricating oils, independent compounders purchase various lubricant oil base stocks[2] from crude oil refineries, and blend and compound these stocks with various oil-soluble additives to achieve specified lubricating qualities for each finished lubricating oil. Industrial and commercial demand for various lubricating properties varies greatly, and independent compounders may produce as many as 100 different lubricating oils, each one blended to meet the specifications for a particular use.

The process of blending and compounding lubricating oils does not involve physical separation or chemical reaction processes. It is a mixing operation where lubricant oil base stocks and additives are mechanically mixed together in blending tanks. In some cases, heating is required to facilitate the blending process. In such cases, the materials are heated in an open (i.e., atmospheric pressure) kettle to temperatures less than 200 degrees fahrenheit.[3]

The second category of finished lubricants, greases, are produced by the interaction of three basic materials: Animal or vegetable fats, alkalies, and lubricant oil base stocks. Normally, lubricant oil base stocks and fats are combined in a pressurized kettle and heated and mechanically mixed until the fat dissolves in the oil, forming a colloidal mixture. An amount of alkali sufficient to neutralize the fat is then added, and the mixture is heated to approximately 350-400 degrees fahrenheit at pressures up to 100 psi for the required amount of time. The mixture is then blown into an open reduction kettle, where continued heating removes moisture. Next, the mixture is forced through a colloidal mill to complete dispersion of the fats. Finally, the mixture is placed through a deaerator/dehydrator, a vacuum device which removes air and moisture from the mixture, a process known as "polishing."

Although IOCA recognizes that the operations of independent compounders are more limited than those of crude oil refineries,[4] it nonetheless seeks a determination that the processes used to produce finished lubricating oils and greases substantially change the form of the lubricant oil base stocks, and that independent compounders are therefore refiners within the meaning of that term in the price regulations. IOCA makes this contention on behalf of all of its member firms, regardless of whether the firm actually blends and compounds lubricating oils and greases, apparently on the theory that it would be more equitable to apply one rule uniformly to all independent compounders.[5]

ISSUE

Prior to exemption from the Mandatory Petroleum Price Regulations, were sales of finished lubricants by independent compounders governed by the refiner price rule, 10 CFR 212.83, or the reseller/retailer price rule, 10 CFR 212.93?

INTERPRETATION

For the reasons discussed below, it has been determined that those independent compounders which blend and compound lubricating oils by a simple mechanical mixing process, and those independent compounders which merely repackage and resell, or simply resell, lubricants previously finished by crude oil refineries, are resellers or retailers for purposes of the Mandatory Petroleum Price Regulations, and are subject to the provisions of 10 CFR Part 212, Subpart F. Independent compounders which produce greases, however, are refiners for purposes of the price regulations, and are subject to the provisions of 10 CFR Part 212, Subpart E.

The starting point for an analysis of whether independent compounders are governed by the refiner price rule or the reseller/retailer price rule under the Mandatory Petroleum Price Regulations is the regulatory definitions of the terms "refiner," "reseller," and "retailer." 10 CFR 212.31 states that:

"Refiner means a firm (other than a reseller or retailer) or that part of such a firm which refines covered products or *blends and substantially changes covered products*, or refines liquid hydrocarbons from oil and gas field gases, or recovers liquefied petroleum gases incident to petroleum refining and sells those products to resellers, retailers, reseller-retailers or ultimate consumers. * * *

* * * * *

"Reseller means a firm (other than a refiner or retailer) or that part of such a firm which carries on the trade or business of purchasing covered products, and reselling them *without substantially changing their form* to purchasers other than ultimate consumers.

* * * * *

"Retailer means a firm (other than a refiner or reseller) or that part of such a firm which carries on the trade or business of purchasing covered products and reselling them to ultimate consumers *without substantially changing their form.*" [Emphasis added.]

The use of a "substantial change in form" test originated in the Phase II price controls under the Economic Stabilization Act of 1970, as amended, Pub. L. No. 91-379 (August 15, 1970).[6] The test was used in the definitions of manufacturer, wholesaler, and retailer, defining a manufacturer as a firm which uses processes that involve a substantial change in the form of its products. *See* 6 CFR 300.5 (Phase II); *see also* 6 CFR 150.31 (Phase IV).

These definitions under the Economic Stabilization Program were the forerunners of the present definitions of refiner, reseller, and retailer. Refiners, who were previously grouped with manufacturers,[7] continue to be classified as firms which substantially change the form of their products. Neither the regulations under the Economic Stabilization Program nor the present Mandatory Petroleum Price Regulations, however, discuss what constitutes a "substantial change" in the context of petroleum refining.

Prior to analyzing the application to the present case of the substantial change in form test, it should be pointed out that the term "independent compounder" as used by IOCA incorporates some firms which only engage in repackaging previously finished lubricants, or simply reselling already finished and packaged lubricants. IOCA concedes in its supplemental submission that these "two categories of independent oil compounders do not 'substantially change' the lubricant base oil stocks * * *." It is clear that such firms are either resellers or retailers, and, during the period when finished lubricants were covered products,[8] such firms were governed by the reseller/retailer price rule.[9] The question which remains, then, is whether independent compounders which blend and compound lubricant oil base stocks to produce finished lubricants "substantially change" those stocks, and are thus to be treated as refiners rather than resellers or retailers.[10]

The question of what constitutes a substantial change in the context of blending

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[2] These stocks are produced from the heavy fractions of crude oil, and include, but are not limited to, bright stocks, neutral oils, pale oils, and red oils.

[3] A second mixing process for lubricating oils, the "continuous in-line method," uses proportioning pumps to inject appropriate amounts of base stocks and additives into a stream, which is passed through a mixing unit. Where additives are highly viscous, they are injected through heated lines or by high-pressure pumps.

[4] It should be noted that many crude oil refineries produce finished lubricants by processes similar to those outlined above, as a final step in refining crude oil.

[5] As is apparent from IOCA's definition of independent compounder, some firms merely repackage and resell, or simply resell, lubricants previously finished by crude oil refineries.

[6] 12 U.S.C. § 1904 note (1976) (expired April 30, 1974).

[7] *See* 6 CFR 300.5 (Phase II); 6 CFR 150.31 (Phase IV).

[8] *See* n. 1, *supra*.

[9] As noted earlier, in its request for interpretation, IOCA seeks uniform price rule treatment for all of its member firms. The treatment to be accorded an independent compounder, however, must be determined on a case-by-case basis, with the activities of each firm being judged against the regulatory definitions of refiner, reseller, and retailer. The determinations reached in this interpretation with respect to certain blending and compounding processes, however, will provide valuable guidance to IOCA and its member firms in assisting them to determine whether their activities constitute refining rather than reselling or retailing.

[10] Any independent compounder which employs processes significantly different from those discussed in this interpretation may apply to the DOE for a determination of whether it is to be classified as a refiner or a reseller/retailer. Also, any firm which believes that it works a substantial change in the form of the products it produces may request an interpretation based upon the specific base materials and processes used by that firm, and the final products which that firm produces. Each such determination, of course, will depend upon the facts and circumstances of that case.

and compounding processes was recently addressed in *Tristate Oil and Asphalt Sales, Inc.*, Interpretation 1978-22, 43 FR 25079 (June 9, 1978). Tristate is a firm which primarily produces asphalt products and road oil, but which also processes reduced crude oil and other unfinished products to produce residual fuel oils.

In *Tristate*, the DOE concluded that the blending and compounding processes used to produce the residual fuel oils were refining activities. This determination rested upon three factors. First, the residual fuel oil production was undertaken in the context of the manufacture of various asphalt products, which processes clearly involved substantial changes in form from the base materials. Second, Tristate significantly altered many characteristics of the unfinished base materials used to produce residual fuel oil. Third, the processes used by Tristate, which involved heating, secondary blending ingredients, and sophisticated technical control of the various changes effected, indicated that more than mere blending was taking place. The combination of all of these factors required that Tristate's activities be deemed refining activities within the meaning of § 212.31. The DOE cautioned, however, that:

"The determination that Tristate 'substantially changes' as well as blends covered products is based upon the unique factual situation presented in this case. Other firms which blend covered products do not necessarily 'substantially change' them, by virtue of the blending operation. In doubtful cases DOE will determine whether a firm is more appropriately classified as a refiner or reseller/retailer based on the particular facts and circumstances in each case."

Tristate makes clear, then, that determining whether a blending and compounding process substantially changes the form of the base materials requires an evaluation of all the factors surrounding the process. The first such factor is the context in which the process occurs. In the present case, independent compounders are engaged solely in the production of finished lubricants, and do not produce refined petroleum products other than lubricating oils and greases. This differs significantly from crude oil refineries, which may also produce finished lubricating oils and greases, but do so as a final step in the full range of refining processes, commencing with crude oil and ending with numerous refined petroleum products, including finished lubricants.

Second, it is important to note that lubricant oil base stocks are a form of finished petroleum product which does not require further distillation or related processing. The Federal Energy Administration (FEA), a predecessor agency to the DOE, recognized this in *Preliminary Findings and Views Concerning the Exemption of Naphtha, Gas, Oil, and "Other Products" from the Mandatory Petroleum Allocation and Price Regulations* (*Preliminary Findings*), a report issued June 4, 1976. The report noted that "[l]ubricating base stock oils are refined petroleum products which are primary components used in the compounding and blending of lubricants and greases." *Preliminary Findings* at 23. The report also stated that "* * * lubricating base stock oils * * * are finished products produced at the refinery * * *." *Preliminary Findings* at 182.[11] The fact that lubricant oil base stocks are deemed finished petroleum products suggests that further processing of those stocks would normally not involve a refining process.

A third factor which must be taken into account is the process used in blending and compounding the lubricant oil base stocks. As was noted earlier, lubricating oils are produced by a mechanical mixing process which occurs at atmospheric pressure and may be accompanied by heating. Greases are produced by dissolving fats and alkalies in lubricant oil base stocks under pressure and at high temperatures. The greater the scope of the process, and the more drastic the operation, the more it is likely that the process will substantially change the form of the lubricant oil base stocks.

Finally, and most important, a comparison between the condition and qualities of the lubricant oil base stocks and the finished lubricating oils and greases will indicate the degree to which the blending and compounding processes have changed the form of the lubricant oil base stocks. The important consideration here is a comparison of the degree of change from the lubricant oil base stocks, for, as the definition of refiner indicates, the change must be substantial in order to be considered refining.

Applying these four factors to the present case, of course, the first two factors mentioned above are identical in evaluating the production by independent compounders of both lubricating oils and greases. Independent compounders do not process crude oil or produce refined petroleum products other than lubricating oils and greases, and the beginning materials for both, lubricant oil base stocks (which are themselves a form of finished petroleum products), are the same. Both of these factors tend to indicate that the activities of independent compounders are not refining activities. Evaluation of the remaining two factors, however, reveals fundamental differences between the production of lubricating oils and greases, differences which compel the conclusion that a substantial change in form occurs in the manufacture of greases but not in the production of lubricating oils.

In considering the third factor as applied to lubricating oils, that is, the processes used to produce those oils, it is apparent from the outset that mere mechanical mixing of similar oils, resulting in a finished oil which is similar to its component parts, will not work a substantial change in the form of those component parts. For instance, in *Albina Fuel Co.*, Interpretation 1975-74, 42 FR 23767 (May 10, 1977), a retailer loaded light (PS 300) and industrial weight (PS 400I) residual fuel oil into a truck. By the time the truck reached its destination, the oil had become sufficiently mixed to permit the retailer to sell the oil as medium (PS 400M) residual fuel oil. There was no suggestion in *Albina* that this activity substantially changed the form of the residual fuel oil.

Similarly, the recent rulemaking entitled *Resellers and Retailers—Blends of Covered and Non-Petroleum-Based Products*, 43 FR 24265 (June 5, 1978), indicates that the blending of materials as diverse as gasoline and non-petroleum products such as ethyl alcohol is not a refining activity. In that amendment to the reseller/retailer price rule, there is no suggestion that firms engaging in such blending are substantially changing the form of the gasoline or otherwise acting as refiners.

Further, the condition and qualities of lubricant oil base stocks and finished lubricating oils do not differ substantially. The stocks are themselves lubricating oils which need only to be altered in relatively minor respects to achieve the precise lubricant qualities desired. The beginning and end products are similar in that they are both lubricating oils. The DOE concludes, therefore, that, taking all of the factors discussed above into consideration, the processes by which various lubricant oil base stocks are mixed, together with additives, to produce finished lubricating oils do not cause a substantial change in the form of the lubricant oil base stocks, and that independent compounders which produce lubricating oils are resellers or retailers for purposes of the Mandatory Petroleum Price Regulations.[12]

Greases, however, fare differently under an analysis of the third and fourth factors than do lubricating oils. First, the processes used to produce greases differ greatly from those used to produce lubricating oils. They involve the high temperature, pressurized dispersion of fats and alkalies in the lubricant oil base stocks, followed by milling and polishing. These processes, which involve a degree of chemical change, and are more extensive and technically more complicated than those used in blending lubricating oils, are indicative of the more substantial changes that lubricant oil base stocks undergo when being processed into greases.

Second, there is a dramatic difference between the condition and qualities of lubricant oil base stocks and finished greases. The stocks are transformed into a viscous lubricant with properties quite different from the base stocks. The DOE concludes, therefore, that the manufacture of greases brings about a sustantial change in the form of the lubricant oil base stocks, and that independent compounders which produce greases are refiners for purposes of the Mandatory Petroleum Price Regulations.

[FR Doc. 78-28336 Filed 10-6-78; 8:45 am]

[11] In this connection it should be noted that "unfinished oils" are defined in 10 CFR 212.31 as "all oils requiring further refining, i.e. any operation except mechanical blending or use as an additive."

[12] In reaching this conclusion, the DOE has also considered the decision and order in *Ryder System, Inc.*, 1 FEA ¶20,742 (December 16, 1974). There, a subsidiary of Ryder operated a "gasoline blending facility" at which it blended various chemicals, natural gasoline, and motor gasoline to produce different grades of motor gasoline. The decision and order found that Ryder's subsidiary was a refiner, noting that the "gasoline blending facility substantially changed the composition of the various products which are used to produce motor gasoline * * *." 1 FEA at 20,947. The decision and order, however, provides no discussion of the processes used to produce the motor gasoline, and apparently relies on a change in *composition* rather than a change in the *form* of the base materials. Accordingly, it is impossible to meaningfully apply the result in *Ryder* to the present case.

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-SO-46; Amdt. 39-3313]

PART 39—AIRWORTHINESS DIRECTIVES

Gulfstream American Corp., Model G-1159

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Since the issuance of AD 78-14-06, additional information has been obtained on the cause of the outer cabin window pane failures. This amendment revises AD 78-14-06 to require: (1) Compliance with the applicable Customer Bulletin, and (2) that an applicable Airplane Flight Manual Revision be incorporated. Since the issuance of AD 78-14-06, the manufacturer has issued service instructions dealing with this problem.

DATES: Effective October 9, 1978. Compliance schedule—as prescribed in body of AD.

ADDRESSES: The applicable GAC Customer Bulletin and Airplane Flight Manual Interim Revision may be obtained from Gulfstream American Corp., P.O. Box 2206, Savannah, Ga. 31402, telephone 912-964-3000. A copy of these documents is also located in Room 275, Engineering and Manufacturing Branch, Federal Aviation Administration, 3400 Whipple Street, East Point, Ga.

FOR FURTHER INFORMATION CONTACT:

Curtis Jackson, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7407.

SUPPLEMENTARY INFORMATION: Since the issuance of AD 78-14-06, additional information has been obtained on the cause of the two cabin window outer pane failures so that the inspection and/or cabin pressure differential limitations are required only for aircraft which have any reduced thickness outer window panes installed, and have 600 or more landings on those window panes. Although only outer cabin window panes which have a reduced outer flange are affected; it is difficult to determine in the field, even with the frame assembly and window removed, whether that window has a reduced flange. A customer bulletin in now available which defines the inspection and replacement procedures. A requirement has also been added to incorporate an Airplane Flight Manual Interim Revision (AFM Interim Revision).

With respect to the requirements for the AFM Interim Revision, the FAA believes that since the operational limitations referenced in that Revision were required by AD 78-14-06, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days. The other provisions required by this revision relieve a restriction on some aircraft and impose no additonal burden on any person; therefore, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13), Amendment 39-3261, AD 78-14-06, is amended to read as follows:

GULFSTREAM AMERICAN CORP. (GAC) (Formerly Grumman American Aviation Corp.): Applies to GAC Model G-1159, serial numbers 1 through 229, and 775, airplanes certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent cabin window pane failure and possible engine damage, accomplish the following:

1. Prior to the accumulation of 600 landings on any window, or within the next 10 landings after the effective date of this AD, whichever occurs later, accomplish the following:

A. Inspect and replace all outer cabin window panes in accordance with GAC Customer Bulletin 270A, dated September 18, 1978, or later revision approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region. The visual checks for cracks required by Customer Bulletin 270A may be performed by the pilot. The remaining provisions of this AD apply to aircraft with any reduced thickness outer cabin window pane installed with 600 or more landings.

B. Restrict airplane operations to a maximum cabin pressure differential of 8.0 psi and install one of the following placards on the instrument panel in full view of the pilot, or in an equivalent location approved by the FAA, utilizing a minimum of one-eighth inch high letters with the wording:

1. DO NOT EXCEED A MAXIMUM CABIN PRESSURE DIFFERENTIAL OF 8.0 PSI. THE TABLE CONTAINED IN GAAC LETTER DATED JUNE 20, 1978, MAY BE UTILIZED. COMPLY WITH THE INSPECTION REQUIREMENTS OF AD 78-14-06 PRIOR TO EACH FLIGHT.

2. DO NOT EXCEED A MAXIMUM CABIN PRESSURE DIFFERENTIAL OF 8.0 PSI.

C. Incorporate G-1159 Airplane Flight Manual Interim Revision No. 19-5 dated September 21, 1978, in the Basic Airplane Flight Manual dated April 1, 1969.

2. Repeat the inspection and replacement requirements of paragraph (1)(a) of this AD prior to each flight.

3. The inspection requirements and restrictions on operation may be discontinued, and the AFM Interim Revision removed once all affected outer cabin window panes are either replaced with full thickness outer panes identified in accordance with GAC Customer Bulletin 270A dated September 18, 1978, for later revision approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region; or replaced with windows with less than 600 landings.

4. For the purpose of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the airplane type. Alternately, if an operator has recorded pressure cycles, the number of pressure cycles may be used in lieu of landings.

Amendment 39-3261 became effective July 20, 1978.

This Amendment 39-3313 becomes effective October 9, 1978.

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

Issued in East Point, Ga., on September 26, 1978.

GEORGE R. LA CAILLE,
Acting Director.

[FR Doc. 78-28236 Filed 10-6-78; 8:45 am]

[4910-13]

[Docket No. 78-GL-8; Amdt. 39-3314]

PART 39—AIRWORTHINESS DIRECTIVES

Taylorcraft Corp., Model F-19 and BC-12D Series Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and possible replacement of the aileron control sprocket (Taylorcraft Part No. A-230) on the left control wheel. The AD is needed to prevent unsatisfactory aileron stops from working loose and possibly resulting in excessive alleron travel or jamming of the alleron controls.

DATES: Effective October 16, 1978. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Taylorcraft Aviation Corp., 14600

Commerce NE., P.O. Box 243, Alliance, Ohio 44601.

A copy of the applicable service information is contained in the Rules Docket, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Ill. 60018; and at FAA Headquarters, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

T. Fahr, Engineering and Manufacturing Branch, Flight Standards Division, AGL-212, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Ill. 60018, telephone 312-694-4500, extension 425.

SUPPLEMENTARY INFORMATION: It was recently determined that unsatisfactory aileron stop pins may have been installed on the aileron control sprocket (Taylorcraft P/N A-230). There is a possibility that these stop pins could work loose and allow excessive aileron travel or jamming of the aileron controls.

ADOPTION OF THE AMENDMENT

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

TAYLORCRAFT: Applies to Model BC-12D, Serial Nos. 6923, 8376, 8444, 8570, and 10538, and Model F-19, Serial Nos. F-080 through F-105, F-107 through F-112, and F-115 through F-126 certificated in all categories.

To prevent malfunction of the aileron controls, accomplish the following:

(a) Inspect the two aileron stop pins (Taylorcraft P/N A-235) of the aileron control assembly (Taylorcraft P/N A-A231) prior to next 10 hours time in service after the effective date of this AD or by December 1, 1978, whichever occurs first. The assembly is located on the left side of the control column at the forward end of the control shaft and univeral joint. Determine whether the stop pins are AN393-9 clevis pins as follows: Remove the deck panel (above instrument panel) and set control wheel in neutral position. In this position aileron stop pins will be on top. The proper pins (2) are identified by the flat head of the pins against front face of the sprocket. The flat head is cut partially to clear chain and obtain smooth operation of control. The shank of the stop protrudes approximately ¼". If the sprocket has AN393-9 clevis pins, no further action is necessary.

(b) If the pins are made from 3/16" diameter rod (no head), inspect for the following:

(1) Bent pins,

(2) Loose pins, and

(3) Inadequate protrusion (less than ¼") of pin through aft of sprocket or improper functioning.

(c) If any of the conditions identified in (b) above are present, replace the sprocket prior to further flight.

(d) If the AN393-9 clevis pin is not installed and none of the three conditions in (b) are found, replace the sprocket within 50 flight hours or by May 1, 1979, with a sprocket in which clevis pins (AN393-9) have been installed. Until the sprocket is replaced, reinspect within 10 hours time in service from last inspection. A proper sprocket may be obtained from Taylorcraft Aviation Corp., 14600 Commerce NE., P.O. Box 243, Alliance, Ohio 44601.

Taylorcraft Bulletin No. 78-002 dated September 19, 1978, also applies to the subject matter of this AD.

This amendment becomes effective October 16, 1978.

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

NOTE.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582, March 8, 1978).

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

Issued in Des Plaines, Ill., on September 25, 1978.

WAYNE J. BARLOW,
Acting Director,
Great Lakes Region.

[FR Doc. 78-28231 Filed 10-6-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-SO-60]

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

Alteration of Picayune, Miss., Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Picayune, Miss., transition area. The name of the Picayune Municipal Airport has been changed to Picayune-Pearl River Airport. This action of the city of Picayune, officially changing the name, requires this to be reflected in the transition area description.

EFFECTIVE DATE: 0901 G.m.t., December 28, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

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

ADOPTION OF THE AMENDMENT

Accordingly, subpart G, § 71.181 (43 FR 440) of part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 G.m.t., December 28, 1978, as hereinafter set forth:

In subpart G, § 71.181 (43 FR 440), the Picayune, Miss., transition area is amended as follows:

"* * * Picayune Municipal Airport * * *" is deleted and

"* * * Picayune-Pearl River Airport * * *" is substituted therefor.

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

Issued in East Point, Ga., on September 25, 1978.

GEORGE R. LACAILLE,
Acting Director,
Southern Region.

[FR Doc. 78-28230 Filed 10-6-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-SO-50]

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

Designation of Transition Area, Jamestown, Tenn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates the Jamestown, Tenn., transition area by lowering the base of controlled airspace in the vicinity of the Jamestown Municipal Airport from 1,200 feet to 700 feet above ground level. This action provides necessary airspace for accommodation of IFR operations at Jamestown Municipal Airport.

EFFECTIVE DATE: 0901 G.m.t., November 2, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Ronald T. Niklasson, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7646.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the FEDERAL REGISTER on Monday, July 31, 1978 (43 FR 33257), which proposed the designation of the Jamestown, Tenn., transition area and change of the airport operating status from VFR to IFR. No objections were received from this notice. Accordingly, the airport operating status is changed from VFR to IFR.

ADOPTION OF THE AMENDMENT

Accordingly, Subpart G, § 71.181 (43 FR 440) of part 71 of the Federal Aviation regulations (14 CFR 71) is amended, effective 0901 G.m.t., November 2, 1978, by adding the following:

JAMESTOWN, TENN.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Jamestown Municipal Airport (lat. 36°20'56" N., long. 84°56'47" W.) * * *

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

Issued in East Point, Ga., on September 26, 1978.

PHILLIP M. SWATEK,
Director,
Southern Region.

[FR Doc. 78-28233 Filed 10-6-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-RM-17]

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

Alteration of Denver Terminal Control Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: In the rule published in the FEDERAL REGISTER of September 11, 1978, volume 43, page 40213, the geographical coordinates of the Denver Stapleton International distance measuring equipment (DME), latitude 39°45'51" N., longitude 104°53'54" W., were incorrectly stated in the sixteenth line under, "Adoption of the Amendment," paragraph on page 40213. This correction reflects the correct geographic coordinates as latitude 39°45'21" N., longitude 104°53'54" W. Additionally, under "Adoption of the Amendment," boundaries, area A, thirtieth line, page 40213, 1.5 miles was stated incorrectly. This correction reflects the correct mileage as 3.5 miles

EFFECTIVE DATE: November 2, 1978, at 0901 G.m.t.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph T. Taber, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colo. 80010, telephone 303-837-3937.

SUPPLEMENTARY INFORMATION: FEDERAL REGISTER Document 78-25441 was published on September 11, 1978 (43 FR 40213) with an effective date of November 23, 1978, and altered the Denver Terminal Control Area, Denver, Colo. Incorrect geographical coordinates for the Denver Stapleton DME antenna were inadvertently published. The correct geographical coordinates should have been latitude 39°45'21" N., longitude 104°53'54" W. Additionally, area A, thirtieth line (43 FR 40213) a mileage was incorrectly published as 1.5 miles. The correct mileage should read 3.5 miles.

DRAFTING INFORMATION

The principal authors of this document are Mr. Joseph T. Taber, Operations, Procedures, and Airspace Branch, Air Traffic Division, and Mr. Daniel J. Peterson, Office of Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, FEDERAL REGISTER Document 78-25441, as published on September 11, 1978, on page 40213, is amended in the coordinates of the Denver Stapleton International DME antenna by deleting the sixteenth line under the "Adoption of the Amendment," paragraph to § 71.401 on page 40213 and substituting latitude 39°45'21" N., longitude 104°53'54" W.

Additionally, by deleting the mileage of 1.5 miles on the thirtieth line of the "Adoption of Amendment," paragraph, boundaries, area A, § 71.401 on page 40213, and substituting 3.5 miles.

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

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

Issued in Aurora, Colo., on September 29, 1978.

M. M. MARTIN,
Director,
Rocky Mountain Region.

[FR Doc. 78-28234 Filed 10-6-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-SO-61]

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

Revocation of Transition Area, Apalachicola, Fla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Apalachicola, Fla; 700-foot transition area as it is no longer required.

EFFECTIVE DATE: 0901 G.m.t., December 28, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Donald Ross, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320, telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: The Apalachicola, Fla., transition area, described in § 71.181 (43 FR 440), was designated to provide controlled airspace for instrument operations at the Apalachicola Municipal Airport. The nondirectional radio beacon which supported the approach procedure at the airport has been decommissioned and the approach procedure has been canceled. Therefore, it is necessary to revoke the transition area as it no longer serves a useful purpose. Since this amendment lessens the burden on the public, notice and public procedure hereon are unnecessary.

ADOPTION OF AMENDMENT

Accordingly, Subpart G, § 71.181 (43 FR 440) of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., December 28, 1978, by deleting the Apalachicola, Fla., transition area.

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

Issued in East Point, Ga., on September 28, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-28327 Filed 10-6-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-SO-58]

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

Alteration of Fort Stewart, Ga., Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Fort Stewart, Ga., control zone. It is necessary to revoke a portion of the control zone since the need for airspace protection no longer exists.

EFFECTIVE DATE: Immediately.

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

FOR FURTHER INFORMATION CONTACT:

Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320, telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: This amendment will reduce controlled airspace by revoking the control zone extension northeast of the Wright TVOR and remove from the description reference to the TVOR, which the U.S. Army decommissioned on August 11, 1978.

The aforementioned action will reduce the constraints and, in effect, the impact on the public. Therefore, notice and public procedure thereon are unnecessary.

ADOPTION OF THE AMENDMENT

Accordingly, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective immediately, as hereinafter set forth:

In Subpart F, § 71.171 (43 FR 355), the Fort Stewart, Ga., control zone is amended as follows: "* * *; within 3 miles each side of the Wright TVOR 059° radial, extending from the 5-mile radius zone to 8.5 miles northeast of the TVOR * * *" is deleted.

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

Issued in East Point, Ga., on September 28, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-28328 Filed 10-6-78; 8:45 am]

[4910-13-M]

[Docket No. 18319, Amdt. No. 1121]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

FOR EXAMINATION

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

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

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

FOR PURCHASE

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Inependence Avenue SW., Washington, D.C. 20591; or

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

BY SUBSCRIPTION

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

FOR FURTHER INFORMATION CONTACT:

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

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

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

This amendment to Part 97 is effective on October 10, 1978, and contains separate SIAP's which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAP's, an effective date at least 30 days after publication is provided.

Further, the SIAP's contained in this amendment are based on the cri-

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

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

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking standard instrument approach procedures, effective on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAP's identified as follows:

* * * Effective December 28, 1978:

Battle Creek, Mich.—W. K. Kellogg Regional, VOR Rwy 4 (TAC), Amdt. 12.
Battle Creek, Mich.—W. K. Kellogg Regional, VOR Rwy 22 (TAC), Amdt. 9.
Battle Creek, Mich.—W. K. Kellogg Regional, VOR Rwy 31 (TAC), Amdt. 7.
Kalamazoo, Mich.—Kalamazoo Municipal, VOR Rwy 17, Amdt. 10.
Kalamazoo, Mich.—Kalamazoo Municipal, VOR Rwy 23, Amdt. 11.
Kalamazoo, Mich.—Kalamazoo Municipal, VOR Rwy 35, Amdt. 9.

* * * Effective November 30, 1978:

Valdosta, Ga.—Valdosta Muni., VOR Rwy 35, Amdt. 24.
Bloomington, Ill.—Bloomington-Normal, VOR Rwy 21, Amdt. 13.
East St. Louis, Ill.—Bi-State Parks, VOR/DME-A, Amdt. 5.
Flint, Mich.—Bishop—VOR Rwy 9, Amdt. 17.
Flint, Mich.—Bishop—VOR Rwy 18, Amdt. 10.
Flint, Mich.—Bishop—VOR Rwy 27, Amdt. 13.
Flint, Mich.—Bishop—VOR Rwy 36, Amdt. 6.
Jackson, Mich.—Jackson County—Reynolds Field, VOR Rwy 5, Amdt. 11.
Jackson, Mich.—Jackson County—Reynolds Field, VOR Rwy 13, Amdt. 10.
Jackson, Mich.—Jackson County—Reynolds Field, VOR Rwy 23, Amdt. 13.
Tullahoma, Tenn.—William Northern Field, VOR Rwy 32, Amdt. 5.
Tullahoma, Tenn.—William Northern Field, VOR/DME Rwy 14, Amdt. 2.

* * * Effective November 16, 1978:

Decatur, Ark.—Crystal Lake, VOR/DME Rwy 13, Amdt. 5.
Harrison, Ark.—Boone County, VOR-A, Amdt. 6.
Algona, Iowa—Algona Muni., VOR/DME-A, Amdt. 2.
Abbeville, La.—Abbeville Muni., VOR/DME-A, Amdt. 3.
Boston, Mass.—General Edward Lawrence Logan Int'l, VOR/DME Rwy 15R, Amdt. 13.
Lawrence, Mass.—Lawrence Muni., VOR Rwy 23, Amdt. 6.
Kansas City, Mo.—Kansas City Downtown, VOR Rwy 18, Amdt. 16.
East Hampton, N.Y.—East Hampton, VOR-A, Amdt. 7.
Dickinson, N. Dak.—Dickinson Municipal, VOR Rwy 17, Amdt. 11.
Fargo, N. Dak.—Hector Field, VOR Rwy 35, Amdt. 8.
Oklahoma City, Okla.—Clarence E. Page Muni., VOR-B, Amdt. 3.
Oklahoma City, Okla.—Wiley Post, VOR Rwy 17L, Amdt. 6.
Oklahoma City, Okla.—Wiley Post, VOR-A, Original.
Woodward, Okla.—West Woodward, VOR/DME-A, Amdt. 2.
Bradford, Pa.—Bradford Regional, VOR Rwy 32, Amdt. 3.
Bradford, Pa.—Bradford Regional, VOR/DME Rwy 14, Amdt. 6.
Lancaster, Pa.—Lancaster, VOR Rwy 8, Amdt. 13.
Lancaster, Pa.—Lancaster, VOR Rwy 31, Amdt. 10.

* * * Effective November 2, 1978:

Hilo, Hawaii—General Lyman Field, VOR/DME or TACAN-A, Amdt. 2.
Kahului, Hawaii—Kahului, VOR Rwy 2 (TAC), Amdt. 4.
Kahului, Hawaii—Kahului, VOR Rwy 20, Amdt. 7.
Kahului, Hawaii—Kahului, VOR/DME or TACAN Rwy 20, Amdt. 1.
Kahului, Hawaii—Kahului, VOR/DME or TACAN-A, Amdt. 1.
Chicago (Wheeling), Ill.—Chicagoland, VOR-A, Amdt. 3, canceled.

* * * Effective September 25, 1978:

International Falls, Minn.—Falls International, VOR/DME or TACAN Rwy 31, Amdt. 1.

* * * Effective September 21, 1978:

Charlotte, N.C.—Douglas Muni., VOR Rwy 36R, Amdt. 8.

2. By amending § 97.25 SDF-LOC-LDA SIAP's identified as follows:

* * * Effective December 28, 1978:

Battle Creek, Mich.—W. K. Kellogg Regional, LOC BC Rwy 4, Amdt. 9.
Kalamazoo, Mich.—Kalamazoo Municipal, LOC BC Rwy 17, Amdt. 11.

* * * Effective November 16, 1978:

Lawrence, Mass.—Lawrence Muni., LOC Rwy 5, Amdt. 3.
Nantucket, Mass.—Nantucket Memorial, LOC (BC) Rwy 6, Amdt. 4.

* * * Effective November 2, 1978:

Kahului, Hawaii—Kahului—LOC/DME(BC) Rwy 20, Amdt. 5.

* * * Effective September 21, 1978:

Wrangell, Ark.—Wrangell, LDA/DME-C, Amdt. 5.
Wrangell, Ark.—Wrangell, LDA/DME-D, Amdt. 4.

3. By amending § 97.27 NDB/ADF SIAP's identified as follows:

* * * Effective December 28, 1978:

Battle Creek, Mich.—W. K. Kellogg Regional, NDB Rwy 22, Amdt. 8.
Kalamazoo, Mich.—Kalamazoo Municipal, NDB Rwy 35, Amdt. 11.

* * * Effective November 30, 1978:

Charlotte, N.C.—Douglas Muni., NDB Rwy 5, Amdt. 24.

* * * Effective November 16, 1978:

Algona, Iowa—Algona Muni., NDB Rwy 12, Amdt. 1.
Spirit Lake, Iowa—Spirit Lake Muni., NDB Rwy 16, Amdt. 3.
Concordia, Kans.—Blosser Muni., NDB Rwy 17, Original.
Lawrence, Mass.—Lawrence Muni., NDB Rwy 5, Amdt. 1.
Kansas City, Mo.—Kansas City Downtown, NDB Rwy 18, Amdt. 14.
Connellsville, Pa.—Connellsville, NDB Rwy 5, Amdt. 3.

* * * Effective November 2, 1978:

Kahului, Hawaii—Kahului, NDB Rwy 20, Amdt. 3.

* * * Effective September 18, 1978:

Hawesville, Ky.—Hancock Field, NDB-A, Amdt. 1.

4. By amending § 97.29 ILS-MLS SIAP's identified as follows:

* * * Effective December 28, 1978:

Battle Creek, Mich.—W. K. Kellogg Regional, ILS Rwy 22, Amdt. 9.
Kalamazoo, Mich.—Kalamazoo Municipal, ILS Rwy 35, Amdt. 13.

* * * Effective November 30, 1978:

Valdosta, Ga.—Valdosta Muni., ILS Rwy 35, Amdt. 2.
Flint, Mich.—Bishop, ILS Rwy 9, Amdt. 11.
Jackson, Mich.—Jackson County—Reynolds Field, ILS Rwy 23, Amdt. 5.
Charlotte, N.C.—Douglas Muni., ILS Rwy 5, Amdt. 27.

* * * Effective November 16, 1978:

Baton Rouge, La.—Ryan, ILS Rwy 22, Amdt. 1.
Boston, Mass.—General Edward Lawrence Logan Int'l, ILS Rwy 15R, Amdt. 3.
Kansas City, Mo.—Kansas City Downtown, ILS Rwy 18, Amdt. 16.
Fargo, N. Dak.—Hector Field, ILS Rwy 35, Amdt. 26.
Oklahoma City, Okla.—Wiley Post, ILS Rwy 17L, Amdt. 4.

* * * Effective November 2, 1978:

Kahului, Hawaii—Kahului, ILS Rwy 2, Amdt. 13.

5. By amending § 97.31 RADAR SIAP's identified as follows:

* * * Effective December 28, 1978:

Kalamazoo, Mich.—Kalamazoo Municipal, RADAR-1, Amdt. 1.

* * * Effective November 16, 1978:

Fargo, N. Dak.—Hector Field, RADAR-1, Amdt. 3.

* * * Effective November 2, 1978:

Kahului, Hawaii—Kahului, RADAR-1, Amdt. 4.

* * * Effective September 21, 1978:

Charlotte, N.C.—Douglas Muni., RADAR-1, Amdt. 13.

6. By amending § 97.33 RNAV SIAP's identified as follows:

* * * Effective November 30, 1978:

Celina, Ohio—Lakefield, RNAV Rwy 26, Amdt. 1.
Tullahoma, Tenn.—William Northern Field, RNAV Rwy 36, Original.

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

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

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

Issued in Washington, D.C., on September 29, 1978.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

[FR Doc. 78-28235 Filed 10-6-78; 8:45 am]

[6740-02-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER A—GENERAL RULES

[Docket No. RM78-24]

PART 1—RULES OF PRACTICE AND PROCEDURE

Freedom of Information Act Requests and Appeals

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission's regulations implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) are revised to provide a uniform manner of addressing and marking FOIA requests and FOIA appeals with the Commission. The purposes of this revision is to insure expeditious handling, routing, consideration and disposition of FOIA requests and appeals within the Commission.

EFFECTIVE DATE: October 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Herbert C. Rice, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, telephone: 202-275-4788.

SUPPLEMENTARY INFORMATION: The processing of Freedom of Information requests and appeals has been delayed in the past due to confusing designations on the documents or the envelopes in which they are enclosed. Requests for information or administrative appeals, taken pursuant to the FOIA, supra, require expeditious response by the Commission's staff. If initial requests for access to Commission records are not clearly labeled, they do not give the Staff adequate notice so that the documents can be forwarded to the appropriate office without delay for processing in accordance with statutory time limits.

This rulemaking addresses this problem by requiring all FOIA requests and appeals to be clearly marked as such. If the request or appeal is not clearly marked, the Commission's staff will mark it upon identification and immediately forward it to the appropriate office. In any event, initial FOIA requests for access to records shall be considered to be received upon actual receipt by the Director of Public Information; appeals from denials of request for access shall be considered to be received upon actual receipt by the Chairman of the Commission.

A general notice of proposed rulemaking has not been published for this rulemaking pursuant to 5 U.S.C. 553, et seq., because it is a rule of Commission procedure and practice and affects only the Commission's management. Pursuant to 5 U.S.C. 553, the rulemaking also will be effective as of the date of issuance since the rule affects only Commission practice or procedure, and management and personnel, and therefore does not abridge the effect of any requests or appeals filed pursuant to the regulations prior to amendment.

(Administrative Procedure Act, 5 U.S.C. 553; Freedom of Information Act, 5 U.S.C. 552.)

In consideration of the foregoing, it is proposed to amend § 1.36, part 1, chapter 1 of title 18, the Code of Federal Regulations, as set forth below.

§ 1.36 [Amended]

1. Section 1.36(f)(1) and (f)(2) are amended by designating the present subparagraphs as § 1.36(f)(1)(i) and (f)(2)(i) and adding new subparagraphs § 1.36(f)(1)(ii) and (f)(2)(ii) to read as follows:

* * * * *

(f) * * *

(1) * * * (i) * * *

(ii) Requests filed pursuant to this section shall be in writing, addressed to the Director of Public Information, and clearly marked "Freedom of Information Request". Any request for information received by the Commission not addressed and marked as indicated in this subparagraph will be so addressed and marked by Commission personnel as soon as it is properly identified and forwarded immediately to the Director of Public Information. Requests made pursuant to this paragraph shall be considered to be received, upon actual receipt by the Director of Public Information.

(2) * * * (i) * * *

(ii) Appeals filed pursuant to this section shall be in writing, addressed to the Chairman of the Commission, and clearly marked "Freedom of Information Appeals". Any such appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and forwarded immediately to the Chairman. Appeals taken pursuant to this paragraph shall be considered to be received, upon actual receipt by the Chairman.

* * * * *

By the Commission. Commissioner Holden dissenting.

(5 U.S.C. 552, 553.)

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-28525 Filed 10-6-78; 8:45 am]

[1505-01]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS: GENERAL

[Docket No. 75N-0339]

PART 229—CURRENT GOOD MANUFACTURING PRACTICE FOR CERTAIN OTHER DRUG PRODUCTS

HUMAN AND VETERINARY DRUGS

Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Holding

Correction

In FR Doc. 78-27121 appearing at page 45014 in the issue for Friday,

September 29, 1978, the effective date of the regulation referred to in the center column of page 45087 as being "March 1, 1979" should have been "March 28, 1979".

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Procaine Penicillin G Aqueous Suspension (Injectable); Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 78-20719 appearing at page 32748 in the FEDERAL REGISTER of Friday, July 28, 1978, § 540.274b *Procaine penicillin G aqueous suspension* is amended by correcting paragraph (c)(3)(iv)(*a*), appearing on page 32749 near the top of the left column, to read "(*a*) *Amount.* 3,000 units per pound of body weight (1 milliliter per 100 pounds body weight) daily."

EFFECTIVE DATE: July 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Myron C. Rosenberg, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1788.

Dated: September 28, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-28334 Filed 10-6-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

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

[Docket No. R-78-517]

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

Fair Market Rents for New Construction and Substantial Rehabilitation

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

ACTION: Final rule.

SUMMARY: This final rule adds fair market rents for three and four bedroom units in elevator buildings of five or more stories for the San Juan, Ponce, Mayaguez, and Arecibo, P.R., and New York, N.Y., market areas.

EFFECTIVE DATE: October 10, 1978.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-7603. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT:

Henry F. P. Cassagne, Chief Appraiser, Office of Technical Support, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-472-4810. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice was given on March 31, 1978, at 43 FR 13758 that HUD was proposing to amend title 24 of the Code of Federal Regulations by incorporating in part 888, subpart A, a revised schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies program)" for all market areas. The final rule was published on June 13, 1978, at 43 FR 25604. The final rule stated that comments received in response to the March 31, 1978, publication received after April 14, 1978, would be carefully considered and additional amendments would be published at a later date if appropriate.

The fair market rents for three and four bedroom units in elevator buildings of five or more stories for the San Juan, Ponce, Mayaguez, and Arecibo, P.R., and New York, N.Y., market areas were included in the March 31, 1978, publication, but were omitted from the June 13, 1978, final rule. They are being published for effect in response to comments received from the Caribbean and New York area offices at the levels proposed in March.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the office of the rules docket clerk at the address set forth above.

Accordingly schedule A of part 888 is amended as set forth below:

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

Issued at Washington, D.C., September 27, 1978.

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

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

These fair market rents have been trended ahead 2 years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

NOTE.—The fair market rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed two bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for noncongregate units and (3) single room occupancy dwelling units are those for 0 bedroom units of the same type.

[FR Doc. 78-28304 Filed 10-6-78; 8:45 am]

AREA OFFICE SAN JUAN, P.R. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SAN JUAN	DETACHED	---	---	343	404	439
	SEMI-DETACHED/ROW	---	323	343	404	439
	WALKUP	256	323	343	404	439
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	301	369	391	454	490
PONCE	DETACHED	---	---	362	426	463
	SEMI-DETACHED/ROW	---	340	362	426	463
	WALKUP	273	340	362	426	463
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	316	387	411	477	515
MAYAGUEZ	DETACHED	---	---	354	417	455
	SEMI-DETACHED/ROW	---	334	354	417	455
	WALKUP	265	334	354	417	455
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	310	380	403	468	505
ARECIBO	DETACHED	---	---	354	417	455
	SEMI-DETACHED/ROW	---	334	354	417	455
	WALKUP	265	334	354	417	455
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	310	380	403	468	505
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA/INSURING OFFICE NEW YORK, N. Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW YORK CITY	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW	---	502	599	697	813
	WALKUP	390	461	555	652	753
	ELEVATOR-2-4 Sty	448	523	623	710	801
	5 + Sty	560	646	779		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

[6735-01-M]

Title 29—Labor

CHAPTER XXVII—FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PART 2700—PROCEDURAL RULES

Amendment of Interim Rule

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Amendment of interim procedural rule.

SUMMARY: The Federal Mine Safety and Health Review Commission, having adopted on a provisional basis certain interim procedural rules (29 CFR Part 2700), notifies the general public that is is amending 29 CFR 2700.57 effective on date of publication of the amendment. The amendment revokes that section and substitutes therefor new § 2700.57 which clarifies procedures applicable to appeals pending before the Interior Department and transferred by section 301 et seq., of the Federal Mine Safety and Health Amendments of 1977, 30 U.S.C. 961 et seq.

DATE: Effective October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip Paschall, Attorney, Office of General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Washington, D.C. 20006, phone 202-632-4770.

The Federal Mine Safety and Health Review Commission has determined to continue in effect interim procedural rules until publication of final rules of procedure and amends effective upon publication § 2700.57 by revoking § 2700.57 and substituting therefor the following:

§ 2700.57 Appeals pending before Interior Department Board of Mine Operations Appeals on March 8, 1978.

With respect to any appeal pending before the Board of Mine Operations Appeals as of March 8, 1978, no further pleadings need be filed to perfect such appeal before the Commission.

(Sec. 113(d)(2), Pub. L. 95-164, 91 Stat. 1314 (30 U.S.C. 823).)

Issued in Washington, D.C., by the Commission on October 4, 1978.

JEROME WALDIE,
Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 78-28486 Filed 10-6-78; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER M—MISCELLANEOUS

PART 242B—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Alteration of Number and Responsibilities of Officers Reporting to the Dean of the University (President)

AGENCY: Uniformed Services University of the Health Sciences.

ACTION: Final rule.

SUMMARY: This document amends the general procedures and delegations to realine certain functions of officers reporting to the dean of the university (president). It adds one officer, and revises titles and responsibilities to correspond to the realinement of functions.

EFFECTIVE DATE: November 9, 1978.

ADDRESS: Legal Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Md. 20014.

FOR FURTHER INFORMATION CONTACT:

Merel Glaubiger, Legal Counsel, 202-295-2113.

SUPPLEMENTARY INFORMATION: In FR DOC 77-36169 published in the FEDERAL REGISTER on December 20, 1977 (42 FR 63775), the Uniformed Services University of the Health Sciences published general procedures and delegations of the board of regents of the Uniformed Services University of the Health Sciences. The purpose of this amendment is to alter the number and responsibilities of officers reporting to the dean of the university (president). The ruie changes the title of director of administrative affairs to director of resource management. It adds a new officer, the assistant dean for administration and sets forth the responsibilities of each.

Because these rules relate solely to matters of university organization and procedure, notice of proposed rulemaking and public participation in the rulemaking are not required by section 553 of title 5 of the United States Code.

Accordingly, pursuant ot the Uniformed Services Health Professions Revitalization Act, and sections 552 and 553 of title 5 of the United States Code, the board of regents of the Uniformed Services University of the Health Sciences, amends Part 242b.7, Chapter I, Title 32, Code of Federal Regulations by revising § 242b.7(a)(7) and § 242b.7(b)(3) and by adding § 242b.7(b)(4) as follows:

§ 242b.7 Officers of the university.

(a) * * *

(7) * * *

(iii) A director of resource management; and

(iv) An assistant dean for administration.

* * * * *

(b) * * *

(3) Director of resource management

(i) The director of resource management shall be responsible for the preparation of budget estimates and program submission presentations for the approval of the board.

(ii) He or she shall be responsible for:

(A) Accounting and financial management;

(B) Internal audit; and

(C) Manpower planning.

(iii) He or she shall make all books, records, and vouchers available for the inspection of any member of the board and shall report at each meeting of the administrative affairs committee.

(4) Assistant dean for administration

(i) The assistant dean for administration shall be responsible for:

(A) The management of the university property and facilities;

(B) Administrative support of the university educational and research programs; and

(C) Personnel management.

(ii) He or she shall report at each meeting of the administrative affairs committee regarding matters of importance in the university's administrative affairs.

Dated: October 3, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-28367 Filed 10-6-78; 8:45 am]

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[OCGD3-78-7-R]

PART 165—SAFETY ZONES

Establishment of Safety Zone in Upper Bay, New York Harbor, N.Y.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations establishes a portion of the water of the Upper Bay, New York Harbor as a safety zone. This safety zone is established to protect vessels from possible damage due to the presence of a fireworks display at the southern tip of Governors Island, N.Y. No vessel may enter or remain in a safety zone without the permission of the captain of the port.

EFFECTIVE DATE: This amendment is effective on October 9, 1978, from 9:15 p.m., e.d.s.t., to 9:45 p.m., e.d.s.t.

FOR FURTHER INFORMATION CONTACT:

Captain J. L. Fleishell, Captain of the Port, New York, Building 109, Governors Island, N.Y., 212-668-7917.

SUPPLEMENTARY INFORMATION: This information is issued without publication of a notice of proposed rulemaking and this amendment is effective in less than 30 days from the date of publication because the short time between scheduling of the event and its occurence made such procedures impractical. Extensive local public notice has been given.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Lieutenant Junior Grade Ristaino, Project Manager, Captain of the Port, New York, N.Y., and Commander James L. Walker, Project Attorney, Legal Office, Third Coast Guard District, New York, N.Y.

In consideration of the foregoing, part 165 of title 33 of the Code of Federal Regulations is amended by adding § 165.302 to read as follows:

§ 165.302 Upper Bay, New York Harbor, N.Y.

The water of the Upper Bay, New York Harbor, within 1,000 yards of the southern tip of Governors Island, N.Y., is a safety zone from 9:15 p.m., October 9, 1978, to 9:45 p.m., October 9, 1978.

(86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46(n)(4).)

Dated: October 4, 1978.

J. L. FLEISHELL,
Captain, U.S. Coast Guard,
Captain of the Port, New York.

[FR Doc. 78-28499 Filed 10-6-78; 8:45 am]

[8320-01-M]

Title 38—Pensions, Bonuses and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 14—LEGAL SERVICES, GENERAL COUNSEL

Recognition of Organizations, Attorneys, and Agents

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations provide for representation of Veterans Administration claimants, including recognition of organizations and their representatives, agents, and attorneys to assure qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits. The Veterans Administration hopes to accomplish more complete claims representation for all veterans and their dependents.

EFFECTIVE DATE: October 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Lindekugel (02A1), Director, Management and Operations Staff, Office of General Counsel, Veterans Administration, Washington, D.C. 20420, 202-389-3730.

SUPPLEMENTAL INFORMATION: On pages 17482 to 17484 of the FEDERAL REGISTER of April 25, 1978, there was published a notice of proposed revision of regulations providing for representation of Veterans Administration claimants and recognition of organizations, accredited representatives, attorneys and agents. Interested parties were given 30 days to submit comments, suggestions or objections to the proposed revision of regulations. We received 25 comments, which are discussed in the following paragraphs.

Section 14.626

Two comments on the "Purpose" section of the proposed regulations suggested that the word "qualified" be changed to "competent," however, the "Purpose" section has not been changed since the Veterans Administration intended by the use of the word "qualified" to convey the meaning first given in Webster's New Collegiate Dictionary: "* * * (F)itted (as by training or experience) for a given purpose; competent." The Veterans Administration desires that those presenting claims on behalf of veterans and their dependents possess a skill sufficient to insure a high quality of representation and believes that the word "qualified" conveys that desire. It was also intended that representation be limited to those who can meet a standard of skill, thus, the requirement that representatives demonstrate their ability to present claims by either passing a test or showing some other ability which would enable them to effectively present claims. The word "qualified" conveys the intention of the Veterans Administration.

One group commented that the need to monitor an applicant's choice of representative was like other administrative agencies which do not so monitor claims representatives. No survey has been done by the Veterans Administration to determine that "no other administrative agency" requires regulation of representatives. However, because of the complexities of claims presentation related to veterans' benefits, we believe it is desirable to have a monitoring system to assure that veterans with valid claims receive the benefits to which they are entitled.

Section 14.627

One comment was that the definition of "National Organizations" should be altered to include the National Association of State Directors of Veterans Affairs. A national organization is not recognized to "improve the communication and flow of information between * * * (the State organizations) in assisting our mobile veteran population in the United States," as suggested, but rather to prepare, present and prosecute claims for veterans' benefits authorized by Federal law. Each State veterans' organization is recognized for this purpose in § 14.628(b).

Section 14.628

The previous regulations included "governmental services or organizations granted a charter or recognition by act of Congress" under "National Organizations." The proposed new regulation dropped the term "governmental services." One group was concerned that the new regulation appeared to preclude legal services organizations and their paralegals from presenting claims. It is not the intent of either the old or new regulations that legal service organizations, even though receiving governmental funds, be recognized as "National Organizations." However, legal service organizations and their paralegals may qualify to present claims under other sections of the new regulations.

Two suggested that there be more than one State organization recognized under § 14.628(b). This section remains unchanged because the Veterans Administration believes it is desirable to recognize only the one instrumentality set up by each State to handle veterans' affairs. County and city veterans' organizations may still qualify to represent claimants under other sections, however.

There were numerous comments on various aspects of § 14.628(c). The requirement for a paid-up membership of 1,000 in order to qualify as an "Other Organization" received 18 comments.

Of these, only one group commented that the 1,000 member requirement was too low. The rest stated that the requirement bore no relationship to qualified representation and was too difficult for small veterans' service groups to reach. The Veterans Administration agrees with this assessment and the regulation has been changed.

The intent was to insure that an organization recognized to represent claimants was stable, responsible and competent. The organization must now demonstrate this by showing organizational membership or by showing that it is a veterans' service organization primarily dedicated to helping veterans and their dependents with title 38, United States Code benefits and programs, or dedicated to assisting former armed forces personnel under other Federal and State programs designed for this purpose. The Veterans Administration considers that a veterans service organization which has a sizable membership or has served a sizable number of veterans in the area of the above programs has demonstrated that it is stable, responsible and competent. Prior experience in representation before the Veterans Administration or the Board of Veterans Appeals, or representation in a discharge upgrading proceeding may be examples of ability to represent.

Other groups may individually qualify their representatives as "agents" under § 14.629. One suggestion was that "the number of power of attorney forms filed by agents of an organization, the types of claims represented before the Veterans Administration and the percentage success rate before the Board of Veterans' Appeals" be considered. This type of criteria is reflected in the changes in § 14.628 (d) and (e) and will be considered when granting recognition.

Other suggestions of criteria which should be used to determine whether an organization can provide qualified representation have also been incorporated into the changes in § 14.628(e), information to be submitted.

Two groups commented on the requirement in the proposed regulations that "Other Organizations" be incorporated or chartered by a State. Both agreed with the Veterans Administration that this was indicative of a serious commitment by an organization seeking recognition. This requirement was kept in the final regulations. However, rather than being a prime requisite, it is now one item to be supplied, as appropriate, under information to be submitted.

Two critical comments were received on the requirement that "Other Organizations" have as their primary purpose the presentation of claims before the Veterans Administration. We agree and have changed the primary purpose for "Other Organizations" to providing services to veterans or to other former armed forces personnel and their dependents. We do not believe that organizations which primarily aid other individuals (elderly, etc.) would be as attuned to the specific needs and problems connected with Veterans Administration claims as veterans service organizations are. However, individual members of other groups who wish to deal with Veterans Administration claims may still be recognized under § 14.629(b).

Several comments were received concerning the provision in the proposed regulations requiring representation in some form before the Board of Veterans Appeals. Four commenters recognized the need for such a requirement but requested greater flexibility in affiliating with a national organization. One suggested that there be no requirement of representation before the Board of Veterans Appeals. The Veterans Administration believes the ability to provide representation before the Board of Veterans Appeals is an important aspect of claims' service. A claimant works closely with and becomes dependent upon an organization to provide representation at the local level, and if the nature of the claim requires representation beyond the regional office, the claimant should be guaranteed a continuous service. The changes in the final regulations reflect the importance of a complete claims service, yet provide the flexibility desired by the commenters. The organization now will not need to affiliate with a national organization, but instead, can affiliate with any organization recognized by the Veterans Administration to provide representation. Moreover, it will not now be mandatory that an organization provide representation before the Board of Veterans Appeals either directly or by affiliation, but instead such organization must make certain that the claimant is aware of the limited representation it can provide.

Four commenters suggested that the language "may be recognized" by the Veterans Administration gave too much discretion in granting recognition to an organization and should be replaced with "shall be recognized." "May" was not changed as this is an adoption of the statutory language used in 38 U.S.C. 3402-3404.

One comment stated that gratuities should be allowed. The word "fee" or "gratuity" is intended to refer to "fee or compensation" pursuant to statutory language. According to Webster's New Collegiate Dictionary, a gratuity is given in "return for or in anticipation of some service." If gratuities were allowed, the door would be open to an abuse which would completely circumvent the intent of 38 U.S.C. 3402.

Two comments on membership were received. One suggested that it be changed so that a showing of "(t)otal paid-up membership should only be required of membership organizations." The other, that the section would not be applicable to certain organizations. The section was changed to provide for nonmembership organizations.

Two groups objected to what they thought was a requirement that representatives of national organizations be full-time paid employees. This is not the case. The information requested here, and included in the final regulations as § 14.628(e)(6)(iii), applies only to those representatives who are also full-time paid employees. Nothing would prevent less than full-time paid workers from becoming representatives.

One group objected to requiring all recognized organizations to submit a copy of the last financial statement of the organization. Although the requirement has been modified somewhat in § 14.628(e)(3)(i), we believe it is important that the Veterans Administration receive financial information to determine the assets committed to veterans' services. This is indicative of a sincere purpose on the part of the organization to provide competent and qualified services. It also indicates that the organization is, indeed, one which provides the services outlined in § 14.628(c), i.e., that it is a veterans service organization.

Section 14.629

Two groups commented on the fact that representatives in § 14.629(a) and agents in § 14.629(b) must establish that they are "of good character and reputation," and expressed an unsureness of the meaning of the phrase. We do not believe that a definition is necessary, but instead have provided that if there is a challenge to the good character and reputation of a specific individual, the District Counsel, pursuant to § 14.629 will resolve the question of current qualifications of a representative, agent or attorney. The

statutory language of 38 U.S.C. 3404 requires agent applicants to show that "they are of good moral character and in good repute."

Many commenters approved of the provisions in § 14.629(a) requiring some sort of testing and training of representatives. One group suggested annual seminars and exams with mandatory attendance. Another suggested that everyone be tested, and another stated that currently operating representatives be tested to retain their status. Section 14.629(a) was left unchanged. Because of the affirmative action requirement of § 14.628(d)(5) and the certification required, representatives will be closely supervised by the recognized organizations or risk losing their status. (See § 14.633(c)(1) of the new regulations.) A training program conducted by the organization (and approved by the Veterans Administration), or a past demonstration by the applicant of ability to present claims should provide a basis equal to that of passing a test to ensure qualified representation. Currently qualified representative should have demonstrated their ability to present claims and, in the absence of complaints concerning their service, will be allowed to continue their representation without reaccreditation.

One group commented that there was no provision to permit paralegals or law students supervised by attorneys to represent claimants. This comment is related to the suggestions of two others that § 14.629(a)(2) be changed to include part-time paid employees and volunteers. The section remains unchanged as the Veterans Administration believes that there is enough flexibility to include these situations. The use of the term "member" in § 14.629(a)(2) is intended to establish that an accredited representative is functioning as a part of an organization and subject to some control by that organization. There must be some affiliation between the representative and the recognized organization so that the Veterans Administration can look to the organization in cases where there are questions as to the functions and capacity of the representative. Paralegals, law students, volunteers, and part-time workers so affiliated with a recognized organization may become accredited representatives.

One group suggested a type of limited representation where those with expertise in only a certain area of claims representation would be limited to that area. With the training and testing provisions of § 14.629(a), sufficient safeguards exist to insure quality representation and it was therefore not believed necessary to provide for limited representation.

One group pointed out the lack of information given prospective agents in § 14.629(b). The Veterans Administration was in agreement with the comment, and the section was changed so that applicants will know that they must file their applications with the Office of General Counsel.

One suggestion was that attorneys should not be exempt from the requirement of testing or otherwise demonstrating their ability to present claims. The Veterans Administration did not change the section to include attorneys in a testing or training program because it accepts the basic premise that attorneys who have been licensed to practice law are assumed to have been trained to represent clients (including Veterans Administration claimants) and to protect the clients' rights. There are provisions for removal after a hearing, if ability is challenged.

Section 14.629(c) has been changed to reflect a suggestion by the Controller of the Veterans Administration to clarify the extent of information an attorney may receive from a claimant's file without the signature of the claimant.

Section 14.631

One group commented that § 14.631 was unclear whether more than one person in the same organization could act on the claimant's behalf. Paragraph (c) of § 14.631 points out that "only one organization, agent, or representative will be recognized at one time in the prosecution of a claim for one specific benefit." This paragraph seemed clear enough and was not changed. In the case of recognized organizations, the organization is given the power of attorney. This would enable several members to review the claimant's file in preparation of the claim. It is not appropriate that, in the case of an individual such as an agent or attorney, more than one person at a time have the ability to review an individual's file.

One suggestion was that the word "field" in § 14.631(a)(2) be eliminated because power-of-attorney forms may be filed at other than Veterans Administration field offices. This suggestion was accommodated.

Section 14.632

One group commented that challenges to recognition should apply to attorneys as well as agents and representatives. There are provisions for removal after a hearing if ability is challenged. Moreover, formal training and oversight by a bar association provide some degree of safeguard.

Two groups suggested the Veterans Administration provide greater due process safeguards to those seeking initial recognition as representatives or agents. The section remains unchanged as it is the Veterans Administration's opinion that the safeguards provided prospective representatives and agents at this stage in the recognition procedure are sufficient.

Section 14.633

One group commented that this section did not set out clearly whether an accused person will be suspended from practice before a final determination has been made by the General Counsel. The paragraphs were rearranged in an attempt to make it clearer that the accused person will be suspended from practice only after the initial inquiry justifies further investigation and hearings on the matter. They also suggested that a standard of proof be included. In response, the standard of "by clear and convincing evidence" was added to be used as the standard of proof in determining whether recognition should be suspended or revoked.

Several comments were received on the reasons listed for suspension or revocation of recognition. Two groups commented on the willfully withholding of material evidence as an unlawful, unprofessional, or unethical practice subject to suspension or revocation of recognition. It was suggested, and the Veterans Administration agrees that this requirement may run counter to several provisions in the Code of Professional Responsibility for attorneys. An attorney should not be required to furnish evidence detrimental to the client's claim, therefore, that language was eliminated from the section.

Two comments were that incompetent representation should also be specifically listed as an offense subject to suspension or revocation. The Veterans Administration chose not to list this offense specifically as instances of incompetence would be covered under § 14.633(c)(4).

Two groups commented that the provision "failing to furnish evidence within 90 days of request by the Veterans Administration" was unclear. No change was thought necessary as the passage clearly refers to cases where the claims representative, agent, or attorney has failed to furnish the evidence due to his or her own fault.

One comment suggested that the hearing provided for in the proposed regulations be changed so that a board of at least three members should preside at the hearing. This section was not changed as it does in reality conform to the spirit of the suggestion. The District Counsel will have made an initial decision. The hearing at the regional level will be by a hearing officer who is not a member of the Office of District Counsel. These two, plus the additional review at the General

Counsel level will mean that three people have reviewed the case.

Proposed § 14.633(c)(4), now § 14.633(d)(1) was changed to accommodate the comment from one group that it appeared the District Counsel's recommendation, rather than the hearing officer's recommendation, would be sent on to the General Counsel. It was intended, and now clearly states, that the District Counsel will submit the entire case to the General Counsel, including the hearing officer's findings as well as District Counsel recommendations.

Section 14.634

One group suggested that a list of allowable expenses be included; however it was concluded that a list would be overly lengthy. Other minor changes are for the purpose of clarity.

Section 14.637

Two groups suggested that space and office facilities be furnished to others besides the national organizations. This regulation implements 38 U.S.C 3402(a)(2) which states: "The Administrator may, in his discretion, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized". Because of limitation on space and because of the statute, we elected not to change the regulation.

The proposed regulations are hereby adopted as changed.

Approved: October 4, 1978.

MAX CLELAND,
Administrator of Veterans' Affairs.

The centerhead preceding § 14.626 is changed, §§14.626 through 14.660 are revoked and §§ 14.626 through 14.637 are added to read as follows:

REPRESENTATION OF VETERANS ADMINISTRATION CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 3401-3405

§ 14.626 Purpose.

The purpose of the regulation of representatives is to assure that claimants for Veterans' Administration benefits have qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

§ 14.627 Definitions.

As used in regulations on representation of Veterans' Administration claimants:

(a) "Agent" means a person who has met the standards and qualifications outlined in § 14.629(b).

(b) "Attorney" means a member in good standing of a State bar.

(c) "Cancellation" means termination of authority to represent claimants.

(d) "Claim" means application made under Title 38, United States Code, and implementing directives, for entitlement to Veterans' Administration benefits, reinstatement, continuation or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(e) "Claimant" means a person who has filed a written application for determination of entitlement to benefits provided under Title 38, United States Code, and implementing directives.

(f) "National organization" means an organization chartered by act of the U.S. Congress or previously recognized by the Veterans Administration.

(g) "Recognition" means certification by the Veterans' Administration of organizations, their representatives, attorneys, and agents, to represent claimants.

(h) "Representative" means a person who has been recommended by a recognized organization and certified by the Veterans' Administration.

(i) "State" includes any State, possession, territory, Commonwealth, or the District of Columbia.

(j) "Suspension" means temporary withholding of authority to represent claimants.

§ 14.628 Requirements for recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Administrator of the Veterans' Administration.

(a) *National organizations.* An organization chartered by act of Congress may be recognized as a national organization in the presentation of claims under the laws administered by the Veterans' Administration.

(b) *State organizations.* State organizations created for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Other organizations.* Organizations other than State and National organizations as set forth in paragraphs (a) and (b) of this section may be recognized when the Veterans Administration has determined that they are veterans service organizations primarily involved in delivering services connected with either title 38, United States Code benefits and programs or other Federal and State programs designed to assist veterans. The term "veteran" as used in this paragraph shall include veterans, former armed forces personnel and the dependents of either. Further, the organizations shall provide responsible, qualified representation in the preparation, presentation and prosecution of claims for title 38, United States Code benefits.

(d) *Requirements for recognition.* In order to be recognized under paragraph (c) of this section the organization:

(1) Shall have as a primary purpose, services to veterans; and

(2) Shall demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of those veterans' services to a sizable number of veterans; and

(3) Shall devote an appreciable portion of its assets to veterans' services; and

(4) Shall establish either that complete claims service will be provided to each veteran requesting representation, or shall give written notice of any limitation in its claims service with advice concerning alternate service. Complete claims service includes the ability to assure representation before the Board of Veterans Appeals. However, representation before the Board of Veterans Appeals may be provided by agreement with another organization recognized by the Veterans Administration; and

(5) Shall take affirmative action, such as training and monitoring of its recognized representatives, to ensure proper handling of claims.

(e) *Information to be submitted.* In order to be recognized under paragraph (c) of this section, the following information shall be supplied:

(1) *Purpose.* A statement outlining the purpose of the organization, the extent of services provided, and the manner in which veterans would benefit by recognition.

(2) *Service commitment.* (i) The number of members and number of posts, chapters, or offices and their addresses; and

(ii) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; and

(iii) The type of title 38, United States Code services performed with an approximation of the number of veteran and dependent clients served by the organization in each type of service designated; and/or

(iv) the type of services performed in connection with other Federal and State programs which are designed to assist former armed forces service personnel and their dependents, and an approximation of the number of veteran and dependent clients served by the organization under each program designated.

(3) *Assets.* (i) A copy of the last financial statement of the organization indicating the amount of funds allo-

cated for conducting veterans' services; and

(ii) A statement of the skills, training and other qualifications for handling veterans' claims of paid or volunteer staff positions.

(4) *Complete claims service.* (i) The record of representation before a discharge review board or the Veterans Administration, or other proof of ability to present claims before the Veterans Administration; and

(ii) Some proof of capability to provide representation before the Board of Veterans Appeals; or

(iii) The proof of association or agreement for the purpose of representation before the Board of Veterans Appeals with another recognized service organization, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning alternate service.

(5) *Affirmative action.* The organization shall execute an agreement which states that it shall take affirmative action, such as training and monitoring of its recognized representatives to ensure proper handling of claims.

(6) *Other.* (i) A statement that neither the organization nor its representatives will charge or accept a fee or gratuity for service to a claimant; and

(ii) The names, titles, and addresses of officers and the officials authorized to certify representatives; and

(iii) The names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(f) *Recognition or denial.* A notice of recognition will be sent within 90 days of receipt of all information to be supplied. However, if recognition is denied an organization, the Veterans Administration will set forth an explanation of the reasons for denial. A denial of recognition may be appealed to the Administrator within 90 days of the denial. The Veterans Administration will consider the appeal within 30 days of receiving such request. The organization will have an opportunity to fully document its position, and the appeal will cover all aspects of the application for recognition and denial.

§ 14.629 Requirements for recognition of representatives, agents, and attorneys.

The District Counsel will resolve any question of current qualifications of a representative, agent or attorney. The claimant; the representative, agent or attorney, or an official of the organization for which they would act; or the appropriate Veterans Administration official may appeal such determination to the General Counsel.

(a) *Representatives.* Recognized organizations shall file with the Office of the General Counsel VA Form 2-21 (Application for Accreditation as Service Organization Representative) for each person they desire recognized as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and:

(i) Has successfully completed a Veterans Administration approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Veterans Administration; or

(iii) Has otherwise demonstrated an ability to present claims before the Veterans Administration;

(2) Is either a member in good standing or a full-time paid employee of such organization, or is recognized and functioning as a representative of another recognized organization;

(3) Is not employed in any civil or military department or agency of the United States.

(b) *Agents.* Individuals desiring recognition as agents must file an application with the Office of General Counsel and establish that they are of good character and reputation. In addition, applicants shall pass a written examination concerning laws administered by the Veterans Administration which shall be prepared and graded in the Office of General Counsel. The examination may, however, be taken at any convenient District Counsel office under the supervision of the District Counsel.

(c) *Attorneys.* Attorneys shall state in writing on their letterhead that they are authorized to represent the claimant in order to have access to information in the claimant's file pertinent to the particular claims presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the claimant or the claimant's guardian. The consent shall be equivalent to an executed power of attorney. (38 U.S.C. 3401; 3404.)

§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A person recognized under this section shall represent only one claimant; however, in unusual circumstances, appeal of such limitation may be made to the General Counsel. (38 U.S.C. 3403.)

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either VA Form 23-22 (Appointment of Veterans Service Organization as Claimant's Representative) or VA Form 2-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with § 14.629(c). The power of attorney shall meet the following requirements:

(1) Contain signature by:

(i) The claimant, or

(ii) The claimant's guardian, or

(iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named—spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and

(2) Shall be presented to the appropriate Veterans Administration office for filing in the veteran's claims folder.

(b) Questions concerning powers of attorney shall be referred to the District Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(c) Only one organization, agent, or representative will be recognized at one time in the prosecution of a claim for one specific benefit. All transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or representative of record until notice of a change, if any, is received by the Veterans Administration.

(d) A power of attorney may be revoked at any time and an attorney may be discharged at any time. A new power of attorney shall constitute a revocation of any existing power of attorney.

(e) The authority which a power of attorney provides may be continued for a reasonable time after the death of the claimant, to determine whether the claim will be continued by a new claimant and whether a new power of attorney will be executed. (38 U.S.C. 3402, 3403, 3404.)

§ 14.632 Letters of recognition.

If challenged, the qualifications of prospective representatives or agents shall be verified by the District Counsel of jurisdiction. The report of the District Counsel, if any, including any recommendation of Veterans Administration station directors, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, letters of recognition, or an identification card, will be issued by the General Counsel, and will constitute authority

to prepare, present, and prosecute claims in all Veterans Administration installations. Record of recognition will be maintained in the Office of General Counsel. (38 U.S.C. 3402.)

§ 14.633 Termination of recognition.

(a) Recognition may be canceled by request.

(b) Upon receipt of information indicating improper conduct, the District Counsel of jurisdiction will initiate an inquiry.

(1) If the result of the inquiry does not justify further action, the District Counsel will close the inquiry and maintain the record for 2 years.

(2) If the result of the inquiry justifies further action, the District Counsel shall take immediate action to suspend recognition. The notice of suspension will state the reason and will also advise that additional evidence may be submitted, or a hearing requested (or both), within 10 working days of receipt of the notice. The time may be extended for sufficient reason.

(c) Recognition shall be suspended or revoked upon a finding by clear and convincing evidence of one of the following:

(1) Violation or refusal to comply with the laws administered by the Veterans Administration or with the regulations or instructions governing practice before the Veterans Administration.

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States.

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting concerning a claim.

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish evidence within 90 days of request by the Veterans Administration; or willfully withholding of an application for benefits.)

(d) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the district counsel's office will present the evidence. The suspended person will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim.

(1) Within 10 working days after either the time allowed under paragraph (b)(2) of this section, or the close of the hearing if one is conducted, the District Counsel will submit the entire case to the General Counsel.

(2) The decision of the General Counsel is final. The records of the case will be maintained in the General Counsel's office for 5 years. (38 U.S.C. 3404, 3405.)

§ 14.634 Fees and expenses

Accredited representatives of national, State or other recognized organizations and individuals recognized for a particular claim shall not be entitled to receive fees. Attorneys and agents are entitled to receive fees as provided by statute. (38 U.S.C. 3404(c)).

(a) *Amount of fees.* For the successful prosecution of claims, attorneys and agents may receive the fee permitted by statute. The fee will be paid to the attorney or agent of record at the time of allowance, by deduction from the benefit allowed, after approval by the Veterans Administration. Questions concerning the amount or proper payee of fees allowed will be resolved by the District Counsel, or designee, who will consider the quality, nature, and extent of the services.

(b) *Expenses.* Without regard to entitlement to fees, an agent, attorney, or other person who incurs an expense in the prosecution of a claim, may submit a sworn itemized account of the expense to the Veterans Administration. It will be retained in the claims folder as part of the permanent record. Payment of expenses is the responsibility of the claimant; however, before demanding or receiving reimbursement from the claimant, the expense shall be approved by the District Counsel, or designee. Notice of the action taken shall be transmitted to the requestor by the service handling the claim. (38 U.S.C. 3404.)

§ 14.635 Reconsideration of denial of fees and expenses.

A request for reconsideration of a denied fee, or statement of expenses, must be received by the General Counsel within 1 year of the date of denial. If agreement cannot be reached and a hearing is requested, a hearing officer willl be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The complainant will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. Within 10 working days after the close of the hearing, the District Counsel will submit the entire case to the General Counsel. The decision of the General Counsel is final.

§ 14.636 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity. No fee shall be allowed for such services under § 14.634(a).

§ 14.637 Space and office facilities.

The Administrator may furnish space and office facilities, if available, for the use of paid full-time representatives of recognized national organizations. (38 U.S.C. 3402.)

[FR Doc. 78-28528 Filed 10-6-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 983-7; PP 8E2102/R180]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

N-(Mercaptomethyl)Phthalimide S-(O,O-Dimethyl Phosphorodithioate)

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) on kiwi fruit. The regulation was requested by Stauffer Chemical Co. This rule establishes a maximum permissible level for residues of the subject insecticide on kiwi fruit.

EFFECTIVE DATE: October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy Gardner, Product Manager (PM) 15, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-426-9425.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 36655) in response to a pesticide petition (PP 8E2102) submitted to the Agency by Stauffer Chemical Co., 1200 South 47th Street, Richmond, Calif. 94804. This petition proposed that 40 CFR 180.261 be amended by the establishment of a tolerance for the cholinesterase-inhibiting residues of the insecticide *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the raw agricultural commodity kiwi fruit at 25 parts per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.261 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before November 9, 1978, file written objections with the Hearing Clerk, Environmental Protection Agency, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and should specify both the provisions of the regulation deemed to be objectional 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 grounds legally sufficient to justify the relief sought.

Effective on October 10, 1978, Part 180, Subpart C, § 180.261 is amended by adding a tolerance for residues of the subject insecticide on kiwi fruit at 25 ppm as set forth below.

(Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: September 27, 1978.

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

§ 180.261 N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog; tolerance for residues.

Tolerances are established for the cholinesterase-inhibiting residues of the insecticide *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the following raw agricultural commodities:

Commodity:	*Parts per million*
Alfalfa	40
Almonds, hulls	10
Apples	10
Apricots	5
Blueberries	10
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mby	0.2
Cherries	10
Citrus fruits	5
Corn, fresh (inc. sweet K + CWHR)	0.5
Corn, fodder	10
Corn, forage	10
Corn, grain	0.5
Cranberries	10
Goats, fat	0.2
Goats, mbyp	0.2
Goats, meat	0.2
Grapes	10
Hogs, fat	0.2
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, mbyp	0.2
Horses, meat	0.2
Kiwi fruit	25
Nectarines	5
Nuts	0.1 (N)
Peaches	10
Pears	10
Peas	0.5
Peas, forage	10
Peas, hay	10
Plums (fresh prunes)	5
Potatoes	0.1
Sheep, fat	0.2
Sheep, mbyp	0.2
Sheep, meat	0.2
Sweet potatoes	10

[FR Doc. 78-28315 Filed 10-6-78; 8:45 am]

[4310-09-M]

Title 43—Public Lands: Interior

CHAPTER I—BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

PART 422—PROCEDURES FOR THE IDENTIFICATION AND ADMINISTRATION OF CULTURAL RESOURCES

Final Rule

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: These regulations establish policies and procedures to meet the Bureau of Reclamation's responsibilities in the identification, protection, preservation, and maintenance of cultural resources. These regulations fulfill requirements in Executive Order 11593 and applicable historic preservation laws and were developed in consultation with the Advisory Council on Historic Preservation pursuant to section 1(3) of Executive Order 11593.

EFFECTIVE DATE: October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. L. David Williamson, Chief, Recreation and Lands Branch, Division of Water and Land, Bureau of Reclamation, telephone 202-343-5204.

SUPPLEMENTARY INFORMATION: On June 9, 1977, the Bureau of Reclamation published proposed rulemaking (42 FR 29682 regarding the "Procedures for the Identification and Administration of Cultural Resources." Public comments were invited through July 11, 1977. All comments received through August 31, 1977, were considered. Written comments were received from 26 sources, and verbal comments were received from 10 persons.

Twenty-eight persons and interest groups expressed general concurrence with the rulemaking. No opposition was expressed. Public comments are summarized as "Comments Leading to Changes in the Rulemaking" or "Comments Not Leading to Changes in the Rulemaking."

COMMENTS LEADING TO CHANGES IN THE RULEMAKING

1. In § 422.2(b) it was recommended that the term "architectural" should be included in the list of resources for whose identification, protection, preservation, and mainterance the Bureau of Reclamation is responsible.

It was also recommended that the statutory language included in the Historic Preservation Act of 1966 describing eligibility for the National Register of Historic Places should be substituted for the language used here. The substituted language should be consistent with the definition of "National Register" that was given in § 422.7(p). (The "National Register" definition is given in the final rules in § 422.7(o).)

2. It was suggested to change "only cover 10 to 20 percent" to "covering an adequate sample percentage" in § 422.3(b)(2). (This change is given in the final rules in § 422.3(b)(1)(ii).)

3. It was suggested to add "Necessary measures to protect the resources shall not be implemented until such notification and consultation procedures can be completed" in § 422.3(h). Similar language was adopted in the final rule.

4. In the discussion of mitigation, § 422.3(k), it was recommended that the following paragraph be included: "Mitigation measures must be appropriate to the nature of the significance of the resource in question. Appropriate mitigation of adverse effects on properties possessing architectural merit or heritage values will necessarily differ from that of adverse effects on properties significant only for the information they contain. Avoidance or preservation may be the only ap-

propriate mitigative measure in some cases." Language similar to that suggested is used in § 422.3(g).

5. It was recommended that the last sentence of § 422.5(b) should be changed to: "All direct contracts, purchase orders, or transfers of funds for cultural resource studies and the selection of contractors may be reviewed by the Archeologist, E. & R. Center, prior to final execution of contracts or transfer agreements if determined by the contracting officer to be beneficial from a technical standpoint. Copies of all actions shall be provided to the Archeologist, E. & R. Center. Language similar to that suggested is used in § 422.5(c).

6. If was suggested that phases I, II, and III surveys be changed to classes I, II, and III surveys in § 422.3(b).

It was also suggested to qualify "excavations" as "test excavations" in § 422.3(b)(3). (This change is given in the final rules in § 422.3(b)(1)(iii).)

7. It was recommended that professional artists and architectural historians be involved in the process of identification and administration of cultural resources. Throughout the rules such professionals are considered under the category of "other professionals." Such professionals were specifically named and added to the definition of "Professional Examination" in § 422.7(r).

8. It was suggested not to specify a particular dated edition of Bureau of Reclamation specification paragraphs titled "Preservation of Historical and Archeological Data" in appendix A(10).

9. It was suggested to add "or retains" to § 422.2(b), line 19.

10. It was suggested to specify that copies of technical reports would be sent to the Department of the Interior Library and the National Technical Information Service in § 422.6(b). In addition to this change, § 422.6(b) was modified to specify that copies of technical reports would also be sent to the Water Resources Scientific Information Center.

11. In § 422.7 it was suggested that the "Historic" resources category include district, object, site, and structure. It was also suggested that National Register definitions of the terms "district, object, site, and structure" be used and that the term "building" be defined. Definitions taken from the January 1977 edition of "How to Complete National Register Forms" are used.

12. It was recommended that in § 422.7(dd) the more extensive discussion of survey in § 422.3(b) should be cross-referenced. The definition of survey in § 422.7(y) now references the discussion of survey in the main body.

13. The word "maintained" was recommended rather than "used" in § 422.3(l). This change is given in the final rules in § 422.3(i).

14. It was suggested that the regulations be made compatible with the procedures for "Determinations of Eligibility for Inclusion in the National Register of Historic Places" (36 CFR Part 63) and that 36 CFR Part 63 be referenced. 43 CFR Part 422 is compatible with 36 CFR Part 63 and the rule has been referenced in § 422.1 and appropriately throughout these final rules.

15. It was recommended that class III surveys in § 422.3(b) be accomplished during Reclamation's feasibility planning stage. Reclamation agrees to carry out class III surveys during the preparation of a feasibility report as explained in § 422.3(b)(2).

16. It was recommended that Reclamation not distinguish between primary and secondary impacts on non-Federal lands. In § 422.2(b), Reclamation recognizes its responsibility for potential impacts it may have on non-Federal lands. The definitions for and distinction between "primary" and "secondary" impacts have been deleted. A definition of "effect" was also added in § 422.7(i).

17. Many general editorial changes were suggested and the proposed rules were carefully rewritten throughout for clarity and consistency. Many sections, particularly §§ 422.3 and 422.5 were also almost totally reorganized.

Comments Not Leading to Changes in the Rulemaking

1. It was recommended that the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH) have (a) staff member(s) involved when a project is eligible to make application for NEA or NEH funds. Cultural resources on Bureau of Reclamation projects are ineligible for NEA and NEH funds.

2. The question of whether the Bureau of Reclamation possesses the authority to promulgate a regulation regarding the implementation of portions of the National Historic Preseva-tion Act was raised. Although section 211 of Pub. L. 94-422 states that "The Council is authorized to promulgate such rules and regulations as it deems necessary * * *," it does not give the Advisory Council the exclusive right to do so. Section 1(2) of Executive Order 11593 requires that Federal agencies "initiate measures and procedures necessary to direct their policies, plans and programs * * *," and section 1(3) of the Executive order provides that Federal agencies shall "initiate procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archeological significance."

3. It was recommended that Federal agencies be responsible for their construction impact (e.g., raw material sources) outside of the primary construction zone. These regulations include responsibility for such areas of impact.

4. It was suggested that State Historic Preservation Officers (SHPOs) and other qualified professionals be more involved in the review process outlined in the procedures. Reclamation believes that the procedures already allow for adequate involvement by and consultation with SHPOs and qualified professionals.

5. Suggestions for definitions were considered but it was determined that the existing definitions (other than those noted under "Comments Leading to Changes in the Rulemaking") are adequate for the Bureau of Reclamation's purposes.

It was also suggested to move the definitions section to the beginning of Part 422 but we have concluded that they should remain as § 422.7.

6. Comments on our survey phases (§ 422.3(b)) incorrectly included a belief that the class III surveys are an integral part of recovery, protection and/or preservation and should be accomplished under authority of the Archeological and Historical Preservation Act of 1974. The Bureau of Reclamation class I, II, and III surveys are an integral part of identification, protection, and/or preservation and are to be accomplished as part of the planning processes under the authority of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966; see provisions in § 422.3(b).

7. Comments on the delegation of authority were considered. For the purpose of this rulemaking, it was decided to remain with the language in Executive Order 11593 in reference to the authority of the Secretary of the Interior.

8. It was suggested that the "Procedures" should be organized according to three major types of tasks covered by historic preservation authorities. The separation of three major types of tasks would not be consistent with the Bureau of Reclamation's operational procedures.

9. Comments on program procedures and administration were considered. The program procedures and administration are organized to allow the Bureau of Reclamation to effectively integrate its cultural resource responsibilities into its planning, operation, and maintenance procedures and to be consistent with existing historic preservation legislation.

It is hereby determined that the publication of this regulation will not significantly affect the quality of the human environment and that no envi-

ronmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(c), is required. For specific proposals requiring the Bureau of Reclamation to carry out its cultural resource responsibilities as set forth in this regulation, compliance with the National Environmental Policy Act will be accomplished on an individual basis.

The primary authors of this rulemaking are: Ward Weakly, Archeologist, Engineering and Research Center, Denver, Colo., telephone, 303-234-4348; Jean Kujawa and Diana Gelburd, Division of Water and Land, Department of the Interior, Washington, D.C., telephone, 202-343-5204.

NOTE.—The Department of the Interior has determined that the publication of this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: October 3, 1978.

JAMES A. JOSEPH,
Under Secretary of the Interior.

Pursuant to the authority of the Secretary of the Interior contained in Executive Order 11593 of May 13, 1971, it is hereby established a new part 422 of title 43 to read as follows:

Sec.
422.1 Purpose and scope.
422.2 Responsibilities.
422.3 Program procedures.
422.4 Coordination with other Agencies and entities.
422.5 Administration.
422.6 Records and reports.
422.7 Definitions.

AUTHORITY: E.O. 11593 of May 13, 1971.

§ 422.1 Purpose and scope.

This part sets forth regulations of the Bureau of Reclamation with regard to the following Public Laws, Federal Regulations, Departmental Manual provisions and Executive Order:

(a) Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431)

(b) Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461-467)

(c) Reservoir Salvage Act of 1960 (74 Stat. 220, 16 U.S.C. 469) as amended by Pub. L. 93-291, the Historical and Archeological Preservation Act of 1974 (88 Stat. 174, 16 U.S.C. 469)

(d) National Historic Preservation Act of 1966 (NHPA) (80 Stat. 915, 16 U.S.C. 470) as amended in 1973 by Pub. L. 93-54 and in 1976 by the Land and Water Conservation Fund Act, Pub. L. 94-422

(e) National Environmental Policy Act of 1969 (NEPA) (83 Stat. 852)

(f) Executive Order 11593, for "Protection and Enhancement of the Cultural Environment," May 13, 1971

(g) Preparation of Environmental Impact Statements Guidelines (40 CFR Part 1500)

(h) National Register of Historic Places (36 CFR Part 60)

(i) Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800)

(j) Determinations of Eligibility for Inclusion in the National Register of Historic Places (36 CFR Part 63)

(k) Protection of Properties in the National Register of Historic Places (426 DM 1)

(l) Preservation of Historic Property (519 DM 1)

(m) Environmental Quality (516 DM 1-3)

The scope of this part embraces the elements of Executive Order 11593, section 1, which states:

"The Federal Government shall provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch * * * shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally-owned sites, structures, and objects * * * are preserved, restored, and maintained for the inspiration and benefit of the people, and (3) * * * institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of nonfederally owned sites, structures, and objects of historical, architectural, or archeological significance."

§ 422.2 Responsibilities.

(a) *Secretary of the Interior.* The provisions of referenced Acts in § 422.1 assign Governmentwide overview and consultative responsibilities to the Secretary of the Interior for performing the functions necessary to execute the policies prescribed in Executive Order 11593 and applicable historic preservation laws.

(b) *Bureau of Reclamation.* The Bureau of Reclamation is responsible for the identification and protection of historical, archeological, architectural, scientific, and paleontological resources, hereinafter referred to as cultural resources, affected by Reclamation actions or on Reclamation lands. Reclamation will manage the cultural resources on Reclamation lands in compliance with national policies in an effort to protect, preserve, rehabilitate, restore and maintain the properties, as appropriate. Reclamation is also responsible for identifying and considering cultural resources on nonfederally owned areas which are or will be affected by Reclamation actions (includes Reclamation funded, licensed, or proposed activities). It is the responsibility of the Bureau of Reclamation to identify, evaluate and nominate to the National Register of Historic Places (National Register) all districts, sites, structures, buildings, and objects significant in American history, architecture, archeology, and culture which may be eligible under National Register criteria (36 CFR 60.6) on all areas affected by a Reclamation action and on all Reclamation owned, withdrawn, or acquired lands or land in which Reclamation acquires or retains an interest. These responsibilities shall be fully considered in project planning, construction, operation and maintenance. Reclamation responsibilities also include notification to the Secretary of the Interior when it is determined that a Reclamation project will cause irreparable loss or destruction of cultural resources listed on or eligible for listing in the National Register and the preparation of an annual report of activities carried out pursuant to Pub. L. 93-291.

(1) *Commissioner.* The Commissioner of the Bureau of Reclamation is responsible for Reclamation's compliance with Executive Order 11593 and the applicable provisions of the laws and regulations referenced in § 422.1.

(2) *Regional Directors.* Each Regional Director is responsibile for insuring that proposed and existing Reclamation activities under his jurisdiction are executed according to the provisions of these regulations (43 CFR Part 422).

(3) *Archeologist, Engineering and Research Center (E&R Center).* The Archeologist, E&R Center, Denver, Colo., is Reclamation's chief archeologist. This person is responsible for providing advice to the Commissioner's office and for furnishing technical assistance to and coordinating with the regional offices about Reclamation's cultural resources program.

(c) *Advisory Council on Historic Preservation (Advisory Council).* Under the provision of section 106 of the National Historic Preservation Act and Executive Order 11593, the Advisory Council must be afforded an opportunity for comment on Federal, federally assisted or federally licensed undertakings that may affect properties listed in or eligible for listing in the National Register of Historic Places. The procedures for consultation with the Advisory Council are outlined in 36 CFR Part 800.

(d) *State Historic Preservation Officer (SHPO).* The SHPO is the State official, designated pursuant to 36 CFR Part 60, responsible for liaison with Federal agencies in their implementing the National Historic Preservation

Act of 1966 and Executive Order 11593, and for the coordination of the Statewide survey of historic properties and the development of a comprehensive State historic preservation plan.

§422.3 Program procedures.

(a) *Policy.* In all matters related to cultural resources, the Bureau of Reclamation regulations (43 CFR Part 422) and policy memorandums in further implementation of these regulations from the Commissioner govern the actions of Reclamation.

(b) *Surveys.* Cultural resources surveys and inventory reports will be completed for all Reclamation lands and existing projects as well as for those areas which may be affected by a Reclamation action or where Reclamation actions and projects are currently being planned.

(1) *Levels of surveys.*The Bureau of Reclamation conducts three levels of surveys.

(i) *Class I survey.* A class I survey is primarily a literature search. It consists of consulting the National Register of Historic Places and supplemental National Register listings to determine whether any National Register eligible/listed properties exist in the area of a Reclamation action or on lands under Reclamation's administration. It also includes contacting the SHPO, State Archeologist, State Historian, State Historical Society, and/or other appropriate individuals, agencies, or institutions to determine what cultural resources may be present in an area and what kind of additional information may be needed for an adequate inventory of cultural resources. Regional records shall also be examined for potentially eligible properties on lands under Reclamation's administration.

(ii) *Class II survey.* A class II survey is a field examination of the area to be affected by a Reclamation action or on lands under Reclamation's administration in an attempt to determine the presence or absence of cultural resources. This type of survey might be an on-the-ground examination and/or an evaluation covering an adequate sample percentage of the total study area which may be studied more intensively during class III surveys. Class II surveys might include remote sensing techniques and/or sampling procedures. Class II surveys are designed to aid in determining the necessity for a class III survey and may be combined with a class I survey or bypassed in favor of a class III survey.

(iii) *Class III surveys.* A class III survey consists of an intensive on-the-ground examination of all the areas to be affected by a Reclamation action or on lands under Reclamation's administration. It is designed to locate and make a preliminary professional evaluation of all identified cultural resources. All cultural resources identified as signficant as a result of a class III survey will then be nominated to the National Register of Historic Places or a determination of eligibility will be sought. A class III survey may require test excavations for the purpose of evaluating the cultural resources.

(2) *Surveys during preparation of pre-authorization appraisal investigation and feasibility investigations.* Each planning investigation conducted by Reclamation shall include, in its initial steps, a survey of the cultural resources in the planning area. The type of survey shall be consistent with the level of detail of the planning investigation. Class I surveys are normally undertaken during the preparation of an appraisal report or the compilation of initial resource base information for the multiple objective planning (MOP) effort. Class I surveys should be undertaken at the beginning of a cultural resources evaluation in order to minimize the possibility of duplication of effort. The results of a class I survey may be used in the evaluation of alternative plans. Class II surveys are normally undertaken during the feasibility investigation. To complete the feasibility investigation, a class III survey is necessary to permit the completion of the identification, determination of eligibility and nomination process when potential National Register sites are located or indicated to be present in a class II survey. If the projected cost of a class III survey is unusually high, clearance will be obtained from the Commissioner's office before proceeding with the survey. A class III survey may not be possible during preparation of pre-authorization appraisal investigation and feasibility investigation when access to private lands is denied or when pre-authorization planning investigations are terminated because of Congressional action.

(3) *Surveys during post-authorization definite plan report preparation and/or construction.* Class III surveys should be completed before approval of a definite plan report. For those projects where completion of surveys required in §422.3(b)(2) was not done because project implementation preceded passage of applicable cultural resource laws, or because access was denied, or because Congress authorized the project, class III surveys must be completed on Reclamation project areas or areas subject to a Reclamation action at the earliest possible date.

(4) *Surveys on completed projects and surveys on Reclamation-administered lands.* On areas not previously surveyed for cultural resources, investigations shall begin with a class I survey. Class III surveys of the area should then be conducted unless it is established that surveys by others, consistent with these procedures (43 CFR Part 422), have already been performed to determine the existence of cultural resources and their significance.

(c) *Determination of significance of cultural resources.* (1) Evaluation of cultural resources that may qualify for the National Register of Historic Places.

All cultural resources inventoried during a class I, II, or III survey, except those already eligible/listed on the National Register, shall be evaluated for their potential significance based on National Register criteria (36 CFR 60.6) and other local or State interest. Qualified professionals, including the SHPO, State Historian and State Archeologist, may assist Reclamation in this early assessment of significance process. When there is general agreement that a specific cultural resource property has little or no signficance, no further consideration need be given to the property under this part (43 CFR Part 422).

(2) Determination of Eligibility of Cultural Resources for the National Register of Historic Places.

Reclamation shall apply the National Register criteria for evaluation contained in 36 CFR 60.6 to each cultural resource found to be of some signficance in §422.3(c)(1). If Reclamation and the SHPO agree that a property meets the criteria, the documentation (36 CFR 63.3) will be sent to the Keeper of the National Register of Historic Places. An official determination by the Keeper will be made within 10 working days of receipt of the documentation. If any question exists on whether a property meets the criteria, Reclamation will send the documentation required in 36 CFR 63.2(d)—including the comments of the SHPO—to the Keeper of the National Register. In these cases, the Keeper has 45 days after receipt of the material in which to respond (See 36 CFR 63.2(e)). If Reclamation determines that a cultural resource does not appear to meet the critiera and the SHPO agrees, or if the Keeper of the National Register determine a property is not eligible for the National Register, further consideration of the property shall be handled according to §422.3(e)(2). The procedures in §422.3 (d) and (e)(1) shall be applied to all cultural resource properties determined to be eligible for the National Register of Historic Places.

(d) *Nomination to the National Register of Historic Places.* Reclamation will apply the nomination process set forth in 36 CFR Part 60 to all cultural resource properties determined to be

eligible for the National Register. All regional level work will be conducted in consultation with the Archeologist, E&R Center. Copies of the nomination forms will be sent to the SHPO for his comments. Information copies will be provided to the State Historian and State Archeologist. Regional Directors will submit completed nomination forms to the Archeologist, E&R Center, for review and processing in accordance with the Department of the Interior procedures.

(e) *Determination of project effect on cultural resource properties.* Each Reclamation action will be analyzed in consultation with the SHPO to determine its effect on identified cultural resources.

(1) For properties eligible/listed on the National Register of Historic Places.

(i) *Determination of no effect.* Determination that a Reclamation action will have no effect upon a National Register eligible/listed cultural resource must be adequately documented and shall be the result of a professional evaluation based on the application of the "Criteria of Effect" set forth in 36 CFR 800.8. Should such a finding ensue, Reclamation shall seek the concurrence of the SHPO in consultation with the Archeologist, E&R Center. Should the SHPO agree, the action may proceed without further consultation.

(ii) *Cultural resource affected.* Reclamation will apply the criteria of adverse effect, set forth in 36 CFR 800.9, to determine whether the effect of the undertaking is adverse.

(A) *Determination of no adverse effect.* Upon finding the effect not to be adverse, adequate documentation will be sent to the SHPO for his views. If the SHPO agrees, or if he disagrees but Reclamation still believes that the effect will not be adverse, the documented determination of no adverse effect along with the SHPO's comments will be submitted to the Advisory Council on Historic Preservation, after consultation with the Archeologist, E&R Center. Unless the Advisory Council objects to Reclamation's findings within 45 days of the Council's receipt of the documentation, Reclamation's action may proceed without further consultation.

(B) *Determination of adverse effect.* Should it be determined that a Reclamation action will have an adverse effect on a National Register eligible/listed cultural resource, Reclamation shall submit the documentation to the Advisory Council on Historic Preservation after consultation with the Archeologist, E&R Center (See § 422.3(f)). Subsequent consultation with the SHPO and the Advisory Council should follow the Advisory Council procedures set forth in 36 CFR 800.5.

(2) *Properties ineligible for the National Register of Historic Places.* If a cultural resource property is determined to be ineligible for the National Register, there may be State, local, or private interest in its conservation. Consultations concerning the disposition of an affected property shall be concluded with the interested parties and the Archeologist, E&R Center.

(f) *Notification to the Advisory Council on Historic Preservation.* The Advisory Council on Historic Preservation will be notified in accordance with either of the following two plans when Reclamation action will have an effect on any National Register eligible/listed cultural resources.

(1) When section 102(2)(C) of NEPA is applicable to a Reclamation action or when there is a proposal or action for which Reclamation has lead agency status for preparation of the environmental statement, notification should be accomplished through documentation of the effects incorporated in the draft environmental statement (DES). The DES should discuss, to the extent possible at the time of its issuance, all determinations of significance of cultural resources made pursuant to § 422.3(c).

(2) When section 102.(2)(c) of NEPA is not applicable to a Reclamation action or when the Reclamation action is a part of the post authorization activities (includes operation and maintenance) but an effect on one or more National Register eligible/listed cultural resources is identified, notification should be accomplished by providing the Advisory Council with documentation, as appropriate, in accordance with procedures in 43 CFR Part 422 and 36 CFR 800.4(e).

(g) *Cultural resources mitigation objectives.* It is the policy of Reclamation that mitigation funding for cultural resources, where appropriate, will be provided concurrent and proportionate with expenditures for construction activities as directed in the President's water resource policy message of June 6, 1978. To the fullest extent possible, it is Reclamation's objective to preserve cultural resources, in situ, and total avoidance of adverse effects should always be attempted. However, when all factors and elements related to a Reclamation action are evaluated from the overall public benefit standpoint, it is possible that some cultural resources may be adversely affected through destruction or alteration. In such cases, Reclamation will plan for and implement positive mitigating measures to reduce or counter those effects. Project planning reports and, when applicable, the final environmental statement (under section 102(2)(C) of NEPA), in addition to identifying the adverse effects, will describe the mitigation plans to the extent they have been resolved in consultation with the SHPO and the Advisory Council on Historic Preservation even though a memorandum of agreement has not yet been executed. Mitigation measures should be appropriate to the nature and importance of the cultural resource in question. For example, mitigation for a property possessing architectural merit or heritage values will necessarily differ from that for a property important only for the information it may contain. Mitigation measures may include recording by photographs and measured drawings of the cultural resource; archeological excavation to recover data and materials; relocation of a structure or salvage of its architectural features, or other steps that will insure full knowledge of the affected cultural resource. In all cases, there will be preservation of such physical features as may be possible. The measures also should include provisions for analysis and publication of information collected and deposition of recovered artifacts and materials where they may be of public and educational benefit. Recordation of cultural resources to be destroyed or altered by Federal action is required by section 2(c) of Executive Order 11593. Section 2(f) of Executive Order 11593 specifies certain provisions for historic preservation in the event of the transfer or sale of cultural resources to other agencies or owners. If any Federal cultural resource property is to be removed from Reclamation's jurisdiction or control, provisions for the protection of cultural resources shall be integrated into the action in conformance with the requirements of section 2(f). Such provisions would include mitigation of any adverse effects on cultural resources that might occur as an indirect result of the transfer.

(h) *Conclusion of consultation with the Advisory Council on Historic Preservation for cultural resources adversely affected.* The execution of a memorandum of agreement among the Advisory Council, SHPO and Reclamation normally concludes the consultation process set forth in 36 CFR 800.5 and no Reclamation action which would alter, destroy, modify or relocate the cultural resource will be initiated until the agreement is completed.

(i) *Cultural resources discovered during construction.* All construction contracts arising from a Reclamation action shall provide specifications for the contracting officer to order delays or changes in work when a cultural resource is discovered during the construction phase. If appropriate, the contract price may be adjusted because of delays or the work order change. Reclamation will apply the procedures in this part (43 CFR Part

422) before any further work on the site may proceed.

(j) *Curatorial responsibilities.* Cultural resources on Federal lands are the property of the United States and the Bureau of Reclamation may delegate curatorial responsibilities for materials recovered from cultural resources site explorations or studies done under contract. Arrangements may be made with museums, universities, institutions and/or other agencies to provide storage and curatorial services. These materials may be maintained by the holding institution, if not required by Reclamation for interpretive displays. All curatorial services will be arranged in consultation with the Archeologist, E. & R. Center. Curatorial responsibility for paleontological and archeological materials recovered under the American Antiquities Act of 1906 will be precessed in accordance with the uniform rules and regulations set forth in 43 CFR Part 3.

§ 422.4 Coordination with other agencies and entities.

Coordination with other agencies and entities having responsibilities for cultural resources is required in all phases of the Bureau of Reclamation's project planning and execution. These contacts include the appropriate State Historic Preservation Officer, the Heritage Conservation and Recreation Service for properties eligible/listed in the National Register, and the advisory Council on Historic Preservation. Coordination should also occur with other public interest groups, State Archeologists and Historians, State and local archeological and/or historical societies, other State and Federal agencies, institutions, foundations, and/or individuals with special interests or expertise in cultural resources. A time frame should be specified and a reasonable response period negotiated. If Federal lands administered by, or in cooperation with, another Federal agency will be affected by a Reclamation action, coordination and consultation shall be required with that agency having responsibilites for existing or potential cultural resources on such lands.

§ 422.5 Administration.

(a) *Program establishment.* Reclamation, through each Regional Director, will establish a program to insure that proposed and existing Reclamation activities under his jurisdiction are executed according to the provisions of these regulations (43 CFR Part 422).

(b) *Funding.* (1) Pre-authorization activities. Cultural resource surveys, classes I, II, and III where needed, will be funded from monies appropriated for general investigations leading to preparation of appraisal and feasibility investigations as well as statements/assessments pursuant to the National Environmental Policy Act (NEPA).

(2) *Post-authorization activities.*—(i) *Surveys.* Funding for Reclamation's cultural resource surveys, classes I and II, if not already accomplished and class III which must be done within the post-authorization period, will be funded out of monies appropriated for a post-authorization work program.

(ii) *Recovery work.* Under the authority of Pub. L. 93-291, Reclamation may utilize up to 1 percent of the total cost of a project for data recovery, mitigation, protection and maintenance work, and may request additional funds when necessary.

(3) *Nonreimbursable.* Cost for cultural resource activities in the pre-authorization stage and pursuant to Pub. L. 93-291 will be considered as nonreimbursable project costs.

(c) *Contracts.* Contracting for consultant services, not available in Reclamation, may be either direct with a qualified firm, institution or individual, or through transfer of funds to other agencies with special expertise. Direct contracting, in accordance with existing procedures and procurement restrictions, will enable Reclamation to maintain more effective internal control over the contract. If determined appropriate by the contracting officer, all direct contracts, purchase orders, or transfers of funds for cultural resource work and the selection of contractors shall be reviewed by the Archeologist, E. & R. Center, prior to execution of the contract or transfer agreement. Copies of all actions taken by a Regional Director shall be provided to the Archeologist, E. & R. Center.

(d) *Concurrent actions.* Actions requiring compliance with Executive Order 11593 and 36 CFR Part 800, should be grouped together, to the extent possible, to eliminate repetitive reviews, particularly during pre-authorization activities. In some cases, it may be possible to group all 36 CFR Part 800 consultations on a number of properties into one package for an overall plan. In other cases, consultation on the plan may identify specific aspects of the plan that will require renewed consultations when more detailed project information is developed and affected resources are more completely identified. The Archeologist, E. & R. Center, shall be advised in the initiation of such "programmatic" consultations.

§ 422.6 Records and reports.

(a) *Record of actions involving cultural resources.* A record shall be kept of all Reclamation actions involving cultural resources. These records shall include, but are not limited to, contracts for work, contract completion reports, National Register nomination forms (36 CFR Part 60), relevant correspondence, and any other information that will aid future Reclamation actions in regard to cultural resources.

(b) *Technical reports.* Prior to Reclamation's acceptance of completed contractual obligations, all reports concerning surveys, studies, and/or mitigation efforts shall be reviewed for technical accuracy, completeness, and adequacy by the Archeologist, E. & R. Center, and/or others he may designate. Copies of final accepted reports shall be furnished to:

(1) Commissioner.

(2) Regional Director.

(3) Archeologist, Engineering and Research Center.

(4) Advisory Council on Historic Preservation.

(5) State Historic Preservation Officer.

(6) State Archeologist.

(7) State Historian.

(8) Denver or San Francisco Office of Interagency Archeological Services, Heritage Conservation and Recreation Service.

(9) Representatives of other Federal agencies whose lands may be affected.

(10) Smithsonian Institution.

(11) Seven copies to the Publications Section, Engineering and Research Center, Denver, for distribution to Department of the Interior Library, the National Technical Information Service, and the Water Resources Scientific Information Center.

(c) *Annual report.* Reclamation will be responsible for preparing an annual report to the Secretary of the Interior on actions taken under the provisions of the Reservoir Salvage Act of 1960 (74 Stat. 220, 16 U.S.C. 469) as amended in 1974 (88 Stat. 174, 16 U.S.C. 469).

§ 422.7 Definitions (assembled alphabetically).

For purposes of this part:

(a) "Advisory Council" refers to the Advisory Council on Historic Preservation, established pursuant to title II of the National Historic Preservation Act of 1966 (NHPA) (80 Stat. 915, 16 U.S.C. 470, as amended). Pursuant to section 106 of the NHPA and the provisions of Executive Order 11593, the Advisory Council must be afforded an opportunity for comment on Federal, federally assisted or federally licensed undertakings that may affect properties listed in or eligible for listing in the National Register of Historic Places.

(b) "Appraisal investigation" refers to the first stage in Reclamation's planning process and is a study focusing on water and land resources for a selected area or basin. The appraisal report identifies alternative plans. Detailed investigation of the alternatives

occurs in later feasibility investigations.

(c) "Archeologist, E. & R. Center" refers to Reclamation's chief archeologist at the Engineering and Research Center, Denver, Colo. This person provides advice to the Commissioner's office and furnishes technical assistance to and coordinates with the regional offices about Reclamation's cultural resource program.

(d) "Building" is a structure created by humans to shelter or support any form of human activity. This may refer to a house, barn, church, hotel, or similar structure. "Buildings" may refer to a historically related complex, such as a courthouse and jail or a house and barn.

(e) "Consultation" means of the act of seeking advice or conferring with another party.

(f) "Cultural resource" refers to any building, site, district, structure, or object significant in history, architecture, archeology, culture, or science.

(g) "Definite plan" means the stage of Reclamation's project design and engineering development undertaken following authorization for construction. The definite plan report is used as the basis for project construction.

(h) "District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(i) "Effect" is the extent of project impact on a cultural resource as determined according to the Advisory Council's "Criteria of Effect" (36 CFR 800.8 and 800.9). See § 422.3(d) for a more extensive discussion of "effect".

(j) "Feasibility investigation" refers to Reclamation's second stage of project planning where applicable planning procedures are implemented in detail and alternatives evaluated. The feasibility report is normally utilized to obtain authorization for construction.

(k) "Federally licensed activity" refers to construction or development work carried out under specific Reclamation licenses, contracts, permits, or loans. Also see definition of Reclamation action.

(l) "Historic" or "historical" refers to any cultural resource that is related or associated with the period of written records or for which written documentation is available.

(m) "Land modification" is any major action that would result in a permanent or temporary disturbance of the land. Examples of land modification would be construction activity, the development of new facilities and/or expansion of existing facilities and includes, for example, the building of roads, delivery systems or recreation areas.

(n) "Mitigating measures" refers to those actions that will be taken to avoid, reduce or ameliorate possible or probable adverse effects on a cultural resource.

(o) "National Register" refers to the National Register of Historic Places which is maintained by the Secretary of the Interior under the authority of section 2(G) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470). It is the register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. The entire National Register is published every February in the FEDERAL REGISTER and addenda are published monthly, usually on the first Tuesday.

(p) "Object" is a material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

(q) "Prehistoric" or "prehistorical" refers to any cultural resource that is not related or associated with the period of written records.

(r) "Professional examination" consists of an investigation of the cultural resource or resources by a qualified professional. A "qualified professional" is an archeologist, architect, historian, architectural historian, artist or other appropriate person satisfactory to the Archeologist, E. & R. Center; the State Historic Preservation Officer; State Historian and/or State Archeologist. General guidance for selection of qualified professionals can be found in appendix C of proposed 36 CFR Part 66 (42 FR 5374; January 28, 1977).

(s) "Reclamation action" refers to any Bureau of Reclamation undertaking, project, project proposal or an operation and maintenance activity. It includes any work carried out under Reclamation licenses, permits, contracts, funded activities or Reclamation small loans to private individuals or corporations.

(t) "Reclamation jurisdiction" (or administration) includes all Bureau of Reclamation withdrawn public lands and private lands which the Bureau of Reclamation has acquired in fee title or has a lesser interest in the form of a lease, easement, license or permit.

(u) "Significance" means important to history or prehistory as determined by application of the National Register criteria (36 CFR 60.6) and in consultation with local interest groups, the SHPO, and the Archeologist, E. & R. Center.

(v) "Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural, or archeological value regardless of the value of any existing structures. Examples are battlefields, historic campgrounds, ancient trails or gathering places, deposits of cultural debris and historic farms.

(w) "State Historic Preservation Officer (SHPO)" is the State official, designated pursuant to 36 CFR Part 60, responsible for liaison with Federal agencies in implementing the National Historic Preservation Act of 1966 and Executive Order 11593.

(x) "Structure" is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by humans, it is often an engineering project large in scale.

(y) "Survey" refers to a study relevant to an area in order to locate and evaluate the cultural resources that are, or may be, present. See § 422.3(b)(1) for a more extensive discussion of surveys.

[FR Doc. 78-28368 Filed 10-6-78; 8:45 am]

[4910-14-M]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CG 78-108]

MERCHANT VESSEL SAFETY REGULATIONS

Miscellaneous Editorial Amendments

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document revises addresses and agency organizational information and corrects typographical and editorial errors in the Merchant Vessel Safety Regulations. The presence of outdated addresses and organizational information and typograpical and editorial errors in the regulations creates difficulties for those persons who must use the regulations. These amendments should eliminate resulting confusion by bringing the regulations up to date.

EFFECTIVE DATE: These amendments are effective on October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank K. Thompson, Merchant Marine Technical Division (G-MMT/82), U.S. Coast Guard, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-2174.

SUPPLEMENTARY INFORMATION: Since the amendments in this document are simply editorial or administrative, the Coast Guard finds for good cause under 5 U.S.C. 553 (b) and (d) that notice and public procedure are unnecessary and that these amendments may be made effective in less than 30 days.

Drafting Information

The principal persons involved in drafting this rule are Mr. Frank K. Thompson, Office of Merchant Marine Safety, Project Manager and Lt. G. S. Karavitis, Office of Chief Counsel, Project Attorney.

Discussion of Rule

Current regulations, which permit the submittal of various types of plans for approval to field technical offices of certain Districts, do not reflect the fact that the 5th Coast Guard District may exercise approval authority for the geographical area covered by that district. The 5th District is added to the list of Coast Guard districts to which plans may be submitted and the area of responsibility of the 3d District is amended accordingly. The address given, in these same regulations, for the 8th Coast Guard District is out of date. The correct address is being substituted.

Additionally, typographical errors and accidental omissions that have been detected are corrected. A table showing requirements for certain hose installations which was erroneously printed with dual entries is also being corrected.

The Coast Guard has evaluated this rule under the Department of Transportation "Policies for Improving Government Regulations" published on March 8, 1978 (43 FR 9582). Since this rule merely updates and corrects portions of Title 46, there will be no environmental or economic impacts.

In consideration of the foregoing, Title 46, Code of Federal Regulations is amended as follows:

PART 50—GENERAL PROVISIONS

1. In § 50.20-5, by revising paragraphs (d)(1) and (d)(2) and adding a new paragraph (d)(5) to read as follows:

§ 50.20-5 Procedures for submittal of plans.

* * * * * *

(d) * * *

(1) Commander, 3d Coast Guard District(mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st and 3d Coast Guard Districts.

(2) Commander, 8th Coast Guard District(mmt), Hale Boggs Federal Building, 500 Camp Street, New Orleans, La. 70130, for the geographical area covered by the 2d, 7th, and 8th Coast Guard Districts.

* * * * *

(5) Commander, 5th Coast Guard District(mmt), Federal Building, 431 Crawford Street, Portsmouth, Va. 23705, for the geographical area covered by the 5th Coast Guard District

* * * * *

PART 56—PIPING SYSTEMS AND APPURTENANCES

§ 56.25-5 [Amended]

2. In the second sentence of § 56.25-5(a), by striking the reference "§ 56.30-10(c)(5)" and inserting in its place "§ 56.30-10(b)(5)."

§ 56.50-50 [Amended]

3. In the first sentence of § 56.50-50(e), strike the word "direction" following the words "shall have such" and insert in its place the word "direct."

4. By inserting Table 56.50-105(a) after § 56.50-105(a)(1)(ii) to read as follows:

§ 56.50-105 Low temperature piping.

(a) * * *
(1) * * *
(ii) * * *

Table 56.50-105(a).—*Charpy V-notch energy multiplying factors*

Charpy V-notch specimen size [1]	Factor for minimum energy, average of 3 specimens [1]	Factor for minimum energy single specimen [1]
10×10 mm	1	2/3
10×7.5 mm	5/6	5/9
10×5.0 mm	2/3	4/9
10×2.5 mm	1/2	1/3

[1] Straight line interpolation for intermediate values is permitted.

* * * * *

5. By correcting Table 56.60-25(c) to read as follows:

§ 56.60-25 Nonmetallic materials.

* * * * *

TABLE 56.60-25(c) - INSTALLATION REQUIREMENTS FOR NONMETALLIC FLEXIBLE HOSE

Type of Service	Maximum service pressure (p.s.i.)	Type cover required	Required hose reinforcement	Where permitted
Vital fresh and salt water	150	Self-extinguishing[1]	Wire or polyester	[2,3].
Nonvital fresh and salt water	150	do[1]	do	[4].
Nonvital water and pneumatic	50	do[1]	None	[4].
Do	150	do[1]	Fiber	[4].
Lube oil and fuel Systems		do[1, 5]	Wire	For Flexibility only.[6]
Fluid power systems		do[1]	Wire or polyester	[7].

6. By correcting table 56.95-10 to read as follows:

§ 56.95-10 Type and extent of examination required.

* * * * *

TABLE 56.95-10-MANDATORY MINIMUM NONDESTRUCTIVE TESTS FOR WELDS

Class	Material	Nominal diameter[1]	Wall thickness[1]	Tests[2, 3] RT[4]	MT[5]	PT[6]	Notes
I, I-L, II-L	Any material	<3"	≤3/8"	No	No	No	(7,8)
I, I-L, II-L	P-1 materials or C-Mo P-3	≥3"	≤3/8"	No[7]	Yes	No	(7,8)
		<3"	>3/8"	Yes	No	No	
I, I-L, II-L	Materials other than P-1 or C-Mo P-3	≥3"	≤3/8"	No[7,9]	Yes	Yes	(7,8,9,10)
I, I-L, II-L	Any material	≥3"	>3/8"	Yes	No	No	(11)
		≥18"	Any				
II	do	<18"	Any	No	No	No	

PART 71—INSPECTION AND CERTIFICATION

PART 91—INSPECTION AND CERTIFICATION

PART 189—INSPECTION AND CERTIFICATION

7. In §§ 71.65-15, 91.55-15, and 189.55-15, by revising paragraphs (a)(3)(i) and (a)(3)(ii) and adding new paragraph (a)(3)(v) to read as follows:

§ -15 Procedure for submittal of plans.

(a) * * *

(3) * * *

(i) Commander, 3d Coast Guard District(mmt) Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st and 3d Coast Guard Districts.

(ii) Commander, 8th Coast Guard District(mmt), Hale Boggs Federal Building, 500 Camp Street, New Orleans, La. 70130, for the geographical area covered by the 2d, 7th, and 8th Coast Guard Districts.

* * * * *

(v) Commander, 5th Coast Guard District(mmt), Federal Building, 431 Crawford Street, Portsmouth, Va. 23705, for the geographical area covered by the 5th Coast Guard District.

PART 111—ELECTRICAL SYSTEMS: GENERAL REQUIREMENTS

9. In § 111.05-5, by revising paragraphs (b)(4)(i) and (b)(4)(ii) and adding a new paragraph (b)(4)(v) to read as follows:

§ 111.05-5 Plan approval.

* * * * *

(b) * * *

(4) * * *

(i) Commander, 3d Coast Guard District(mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st and 3d Coast Guard Districts.

(ii) Commander, 8th Coast Guard District(mmt), Hale Boggs Federal Building, 500 Camp Street, New Orleans, La. 70130, for the geographical area covered by the 2d, 7th, and 8th Coast Guard Districts.

* * * * *

(v) Commander, 5th Coast Guard District(mmt), Federal Building, 431 Crawford Street, Portsmouth, Va. 23705, for the geographical area served by the 5th Coast Guard District.

* * * * *

(5 U.S.C. 552, 14 U.S.C. 633)

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

Dated: September 29, 1978.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 78-28202 Filed 10-6-78; 8:45 am]

[4910-59-M]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. FE 77-05; Notice 5]

PART 533—AVERAGE FUEL ECONOMY STANDARDS FOR NONPASSENGER AUTOMOBILES

Definition of "Basic Engine"; Technical Amendment

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This notice amends the definition of "basic engine," as it appears in the light truck fuel economy standards of the National Highway Traffic Safety Administration. The amendment is intended to clarify the applicability of various light truck fuel economy standards for the 1980 and 1981 model years.

DATE: This amendment is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Roger Fairchild, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-2992.

SUPPLEMENTARY INFORMATION: On March 23, 1978, the agency published a definition of "basic engine" as part of its fuel economy standards for 1980-81 model year light trucks. See 43 FR 11995, 49 CFR 533.4. That definition is relevant solely to the determination of which light trucks are "limited product line light trucks," and therefore subject to less stringent fuel economy standards. The latter definition was intended to identify the class of light trucks manufactured by companies which had not had experience designing and applying the advanced emission control systems necessary to meet current and near-term future passenger automobile emission standards. Those systems will be required for many light trucks for the first time beginning in model year 1979. The agency had International Harvester primarily in mind, given the company's unique problems resulting from its limited sales volume, restricted product line, and the fact that its engines are derivatives of medium duty truck (above 10,000 pounds GVWR) engines. See 43 FR 11998.

The original "basic engine" definition incorporates the definition appearing in the Environmental Protection Agency's regulations, 40 CFR 600.002-80(21), which defines that term as "a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator." "Limited product line light truck" is in turn defined by NHTSA as "a light truck manufactured by a manufacturer whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles." See 49 CFR 533.4.

Although the EPA regulation defining "basic engine" does not on its face present any problem in NHTSA's definitional scheme, it grants EPA the authority to designate additional criteria to distinguish "basic engines." EPA has exercised this authority to classify otherwise identical engines used in both cars and trucks as two separate "basic engines," one for passenger cars, and the other for trucks. The effect of this administrative interpretation of the EPA regulation is arguably to cause virtually all light trucks to be "limited product line light trucks" under NHTSA's definitions, contrary to NHTSA's expressed limited intent. Therefore, NHTSA is revising the "basic engine" definition to exclude the additional characteristics specified by the EPA Administrator in that agency's advisory circular.

Since this amendment is in the nature of technical correction and makes the regulations conform to NHTSA's originally expressed intent, and because of the need to immediately clarify any ambiguity in the regulation, it is determined that a notice of proposed rulemaking is unnecessary and contrary to the public interest, within the meaning of 5 U.S.C. 553(b). Therefore, this amendment will be effective immediately.

The National Highway Traffic Safety Administration has determined that this document does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044. Further, this action does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

In consideration of the foregoing, 49 CFR Chapter V is amended as follows:

1. By revising the definition of "basic engine" in § 533.4(b) to read as follows:

§ 533.4 Definitions.

* * * * *

(b) * * *

"Basic engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), and catalyst usage.

* * * * *

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.)

The principal drafter of this document is Roger C. Fairchild.

Issued on October 2, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-28529 Filed 10-6-78; 8:45 am]

[4910-59-M]

[Docket No. 78-14; Notice 1]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Motorcycle Brake Systems

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Motor Vehicle Safety Standard No. 122, Motorcycle Brake Systems, to incorporate an interpretation, clarifying that the parking brake system test for a three-wheeled motorcycle does not require that a vehicle be held on a 30-percent grade for 5 minutes if the limit of traction of its braked wheels is reached on a lower grade so that the vehicle begins to slide. This notice also amends the standard to clarify the conditions under which traction is determined. The action is occasioned by a recent interpretation of the agency provided in response to a petition for temporary exemption from standard No. 122 by Daihatsu Motor Co. whose B-20 vehicle's limit of traction was reached on a 20-percent grade (43 FR 36548). The amendment has no effect upon safety since it is a statement and clarification of an existing agency interpretation.

EFFECTIVE DATE: As an interpretative rule, the amendment is effective October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Scott Shadle, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-426-2153.

SUPPLEMENTARY INFORMATION: Paragraph S5.6 of 49 CFR 571.122, Motor Vehicle Safety Standard No. 122, requires in part that the parking brake system for a three-wheeled motorcycle "be capable of holding the motorcycle, for 5 minutes in both forward and reverse directions, on a 30-percent grade * * *." Recently the agency entertained a petition from Daihatsu Motor Co., Ltd. for a renewal of an exemption granted an electric motor driven cycle in 1976 because of the inability of its braked wheels to hold it on a 30-percent grade in the reverse direction. The agency disposed of the petition by publishing an interpretation allowing Daihatsu to certify compliance with standard No. 122, stating that the agency did not intend "to dictate design requirements such as center of gravity location and tire design mandating that the vehicle itself have a limit of traction sufficient to hold it on a grade that is 30 percent

or greater when its wheels are braked" (43 FR 36548).

NHTSA has decided to incorporate this interpretation into standard No. 122 by appropriate amendments to the parking brake system requirement (S5.6) and test procedures (S7.9). A similar limit-of-traction provision already exists with respect to the parking brake system requirements for hydraulically braked vehicles (paragraph S5.2.1 of 49 CFR 571.105).

This notice also amends standard No. 122 to set forth the road surface on which traction is to be determined. As in the case of the parking brake test conditions in paragraph S6.9 of 49 CFR 571.105 and paragraph S5.6.2 of 49 CFR 571.121, Air Brake Systems, this notice specifies a surface of clean, dry, smooth portland cement concrete.

Because the amendment is an interpretative rule, under the Administrative Procedures Act it may be adopted without prior notice and public comment (5 U.S.C. 553(b)).

The principal authors of this amendment are Taylor Vinson of the Office of Chief Counsel and John Carson of the Office of Rulemaking.

In consideration of the foregoing, 49 CFR 571.122, Motor Vehicle Safety Standard No. 122 is amended as follows:

1. Paragraph S5.6 is revised to read:

S5.6 *Parking brake system.* The parking brake system shall be capable of holding the motorcycle stationary (to the limits of traction of the braked wheels), for 5 minutes, in both forward and reverse directions, on a 30-percent grade, with an applied force of not more than 90 pounds for a foot-operated system and 55 pounds for a hand-operated system (S7.9).

2. Paragraph S6.7 is revised to read:

S6.7 *Road surface.* Road tests are conducted on level roadway having a skid number of 81. The roadway is 8 feet wide for two-wheeled motorcycles, and overall vehicle width plus 5 feet for three-wheeled motorcycles. The parking brake test surface is clean, dry, smooth portland cement concrete.

3. The fourth sentence of paragraph S7.9 is revised to read:

S7.9 * * * Release the service brake and allow the motorcycle to remain at rest (to the limit of traction of the braked wheels) for 5 minutes. * * *

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on October 3, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-28530 Filed 10-6-78; 8:45 am]

[7035-01-M]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC 19 (Sub-No. 9(a))]

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Extension of effective date

AGENCY: Interstate Commerce Commission.

ACTION: Extension of the Effective Date of the amended 49 CFR 1056.19(e).

SUMMARY: By decision served September 1, 1978, the Commission directed that agency statements filed previously with the Commission and still in effect be updated to conform to 49 CFR 1056.19(e), on or before October 1, 1978, the effective date of the modified regulations.

By petitions filed September 13 and 18, respectively, The American Movers Conference and Movers Round Table request 31 and 90 day extensions of time for principal carriers to comply with 49 CFR 1056.19(e), by updating agency statements previously filed and still in effect.

In order that principal carriers may have a sufficient opportunity to comply with the requirements of 49 CFR 1056.19(e), with regard to previously filed agency statements, and extension until November 1, 1978, is being given.

DATES: The time for compliance as required by 49 CFR 1056.19(e), for agency relationships existing prior to the effective date of the modified regulations, is hereby extended to November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, 202-275-7292.

Joel E. Burns, 202-275-7849.

Decided September 28, 1978.

By the Commission, Robert J. Brooks, Director, Office of Proceedings.

H. G. HOMME, Jr.,
Acting Secretary.

FR Doc. 78-28359 Filed 10-6-78; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Revision of Migratory Game Bird Hunting Regulations for the Upper Mississippi River Wildlife and Fish Refuge in Wisconsin and Iowa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revision of special regulations.

SUMMARY: This notice revises the migratory game bird regulations for the Upper Mississippi River Wildlife and Fish Refuge. The revision involves reopening an area within the refuge which had been closed by an earlier FEDERAL REGISTER document.

The intent of this reopening to migratory game bird hunting is to maintain the area as open until an intense study, including public participation, has been complete to determine if the area should remain open to hunting or be closed in future years.

DATES: As set by State laws.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager (Jerry J. Schotzko), 122 West Second Street, Winona, Minn. 55987, phone 507-452-4232.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

The following language in the FEDERAL REGISTER volume 43, FR 40023 (September 8, 1978) is hereby deleted: "A new closed area of approximately 5,000 acres above the Lansing Causeway Highway 82, River Mile 663.5-666 will be in effect beginning with the 1978 Iowa and Wisconsin waterfowl seasons."

All other sections of the above document remain in effect as printed in the FEDERAL REGISTER.

The provisions of this special regulation supplement the regulations which govern hunting on the wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective until June 30, 1979. The public is invited to offer suggestions and comments at any time.

Dated: September 29, 1978.

CHARLES A. HUGHLETT,
Acting Regional Director.

[FR Doc. 78-28375 Filed 10-6-78; 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.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 967]

[Admt. 4]

CELERY GROWN IN FLORIDA

Proposed Revision of Base Quantity Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: A recent amendment of the Florida celery marketing order provides for periodic review of base quantities and authorizes the Secretary of Agriculture to update base quantities by revising the formula used to determine them to reflect a more representative period of historical marketings. The proposed rule would specify this revised formula.

DATE: Comments due November 9, 1978.

ADDRESSES: Comments may be addressed to the hearing clerk, Room 1077-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted. Comments will be made available for inspection at the office of the hearing clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, phone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing agreement No. 149 and order 967, both as amended, regulate the handling of celery grown in Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The amended order (42 FR 32762) provides that the Secretary will issue rules or regulations which set forth the procedures to be followed in implementing the amended provisions. Under the proposal hereinafter set forth, base quantities not used during both the 1977-78 and 1978-79 seasons would be declared invalid and canceled. Active producers would be issued revised base quantities which would reflect their recent history of celery sales. Also, a base quantity transferred on a temporary basis in 1974 would be transferred back to the original transferor. The purpose of the proposed revision is to have base quantities effective for the 1979-80 season that would be more in accord with the current status of the industry.

The proposal is as follows:

Amend subpart—rules and regulations (7 CFR 967.100-967.166) by adding a new § 967.155 to read as follows:

§ 967.155 Revised base quantity formula.

As soon as practicable following the May 1, 1979, registration deadline, base quantities for all producers of record with the Florida celery committee as of December 15, 1976, shall be revised to be effective for the 1979-80 season as follows and in the order enumerated:

(a) Application of the provisions of §§ 967.37(e) and 967.39 as it pertains to permanent transfers.

(b) Selection of the highest number of crates of celery produced and shipped by or for each producer during any one of the five seasons, 1974-75 through 1978-79, or his base quantity for the 1978-79 season, whichever is greater: *Provided however,* No producer who produced and shipped celery during each of the five seasons, 1974-75 through 1978-79 shall lose all or any portion of his base quantity by the application of § 967.39 pertaining to specified period of time transfers, which were approved by the committee prior to the commencement of the 1974-75 season; and provided further, any new producer who is issued a base quantity by the committee under § 967.37(d) or by transfer after December 15, 1976, shall retain his present base quantity.

(c) Any producer who transferred all or a portion of his base quantity for a specified period of time prior to the commencement of the 1974-75 season shall have all or the portion of his base quantity transferred reissued to him upon the expiration date of such transfer.

Dated: October 4, 1978.

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

[FR Doc. 78-28369 Filed 10-6-78; 8:45 am]

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 78-NE-17]

TRANSITION AREA

Alteration of Portsmouth, N.H. (Pease AFB) 700-Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to amend the Portsmouth, N.H. (Pease AFB), 700-foot transition area so as to provide added protected airspace for aircraft executing a new special instrument approach procedure (RNAV-024) to the private Wheelabrator-Frye Heliport.

DATE: Comments must be recieved on or before November 16, 1978.

ADDRESSES: Send comments to the Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 78-NE-17, 12 New England Executive Park, Burlington, Mass. 01803.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803.

FOR FURTHER INFORMATION CONTACT:

Richard G. Carlson, Operations Procedures and Airspace Branch, ANE-536, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Mass. 01803, telephone 617-273-7285.

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking process by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted to the Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 78-NE-17, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803. All communications received on

or before November 16, 1978, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of the Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8085. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 700-foot transition area. The proposed alteration will add a transition extension area to the southwest of the existing transition area approximately 2.5 miles long and 4.5 miles wide. This action is needed to provide added controlled airspace for aircraft executing a new Copter RNAV-024 standard instrument approach procedure to serve the private Wheelabrator-Frye Heliport at Hampton, N.H.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend the description of the Portsmouth, N.H., 700-foot transition area in section 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part) by adding the following:

and within 2.5 miles each side of the Pease AFB VOR 188° radial, extending from the 11 mile radius area to 14 miles south of the VOR.

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

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

Issued in Burlington, Mass., on September 22, 1978.

ROBERT E. WHITTINGTON,
Director, New England Region.

[FR Doc. 78-28237 Filed 10-6-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 306]

RULES GOVERNING THE CERTIFICATION AND POSTING OF OCTANE RATINGS UNDER TITLE II OF THE PETROLEUM MARKETING PRACTICES ACT

Change in Time and Place of Hearings on Proposed Octane Certification and Posting Rule

AGENCY: Federal Trade Commission.

ACTION: Change of time and place of hearings on proposed Octane Certification and Posting Rule.

SUMMARY: This notice changes the time and place of the public hearings to be held on the proposed Octane Certification and Posting Rule.

DATE: The Public hearings will commence on October 16, 1978, beginning at 10 a.m. instead of 9 a.m.

ADDRESS: The hearings will be held in FTC Hearing Room No. 1, Old Pension Building, 440 G Street NW., Washington, D.C., instead of Room 524, 633 Indiana Avenue NW., as previously announced in the FEDERAL REGISTER, Friday, September 22, 1978 (43 FR 43028).

FOR FURTHER INFORMATION CONTACT:

Denis E. Hynes, Presiding Officer, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3421.

SUPPLEMENTARY INFORMATION: By a notice appearing in the FEDERAL REGISTER Friday, September 22, 1978 (43 FR 43028), it was announced that public hearings on the proposed Octane Posting and Certification Rule would commence at 9 a.m. in Room 524, 633 Indiana Avenue NW., Washington, D.C.

This notice is to inform all interested parties that the time and place of the hearings have been changed to commence at 10 a.m. in FTC Hearing Room No. 1, Old Pension Building, 440 G Street NW., Washington, D.C.

In all other respects the previous notice of rulemaking remains the same.

Issued: October 5, 1978.

DENIS E. HYNES,
Presiding Officer.

[FR Doc. 78-28624 Filed 10-6-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 182]

[Docket No. 78N-0273]

CERTAIN HYPOPHOSPHITES

Proposed Removal From Gras Status as Direct Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the generally recognized as safe (GRAS) status of calcium hypophosphite, manganese hypophosphite, potassium hypophosphite, and sodium hypophosphite as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review being conducted by the agency. The proposal would remove these ingredients from GRAS status unless the agency receives evidence of their use (foods that the substances are added to, levels of addition, intended technical effects, and food-grade specifications) during the comment period on this proposal.

DATE: Comments by December 11, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of human food ingredients classifed as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposals (see the FEDERAL REGISTER of July 26, 1973 (38 FR 20040)) initiating this review, in which the safety of calcium hypophosphite, manganese hypophosphite, potassium hypophosphite, and sodium hypophosphite has been evaluated. Under § 170.35 (21 CFR 170.35), the Commissioner proposes to remove the GRAS status of these ingredients because no information exists that they are used in food and because of the absence of information regarding the current food usage levels, food-

grade specifications, and manufacturing procedures for these substances.

Manganese hypophosphite ($Mn(H_2PO_2)_2.H_2O$), sodium hypophosphite ($NaH_2PO_2.H_2O$), calcium hypophosphite ($Ca(H_2PO_2)_2$), and potassium hypophosphite ($KH\ PO_2$) are salts of hypophosphorous acid. Manganese hypophosphite is produced by the reaction of manganese sulfate and calcium hypophosphite. Sodium hypophosphite is produced by neutralization of hypophosphoric acid with sodium carbonate. Calcium hypophosphite is produced by boiling limewater and phosphorous acid together, with subsequent crystallization from solution. Potassium hypophosphite is produced by the reaction of potassium carbonate and calcium hypophosphite.

The hypophosphites were used for many years in medicine, being combined with cod liver oil and other ingredients (Scott's emulsion) and made into various syrups. Many of the biological effects attributed to them have been discredited, and their use has greatly diminished to the point that little, if any, is consumed at present.

Under a regulation published in the FEDERAL REGISTER of January 31, 1961 (26 FR 938), manganese hypophosphite is listed in § 182.5458 (21 CFR 182.5458) as GRAS for use as a nutrient and/or dietary supplement. Calcium hypophosphite, potassium hypophosphite, and sodium hypophosphite were acknowledged as GRAS for use in food in an opinion letter issued by FDA in 1961.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which these hypophosphites were used and the levels of usage. The survey obtained information from consumer consumption surveys and combined it with the manufacturing information to estimate consumer exposure to these ingredients. According to the 1970 survey, there were no reported food uses for calcium, sodium, potassium, or manganese hypophosphites.

Calcium, sodium, potassium, and manganese hypophosphites have been the subjects of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 59 abstracts on the hypophosphites was reviewed and 11 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Hypophosphites given orally or parenterally are rapidly excreted in the urine. In 1902, Panzer fed single 1 g doses (100 mg per kg of body weight) of calcium hypophosphite to a dog. He could detect no tissue concentrations of hypophosphite 6 hours after administration except in the stomach and intestines; but the urine gave a positive test after 15 minutes and continued positive until the next day. Panzer took 1 g (about 16 mg per kg) of calcium hypophosphite himself and found his urine gave a positive test for hypophosphite after 1 hour, and continued to be positive for another 24 hours. A woman given 5 g of sodium hypophosphite (0.5 g twice daily for 5 days, about 16 mg per kg daily) excreted the total dose as hypophosphite in the urine.

In rabbits given sodium hypophosphite, either subcutaneously or intravenously, 81 to 84 percent of the dose (500 and 1,000 mg per kg) was excreted as hypophosphite within 3 days.

Two cows (one pregnant) were given intravenously 0.3 moles (about 100 mg per kg) of hypophosphite salts half calcium and half sodium, and each experiment was repeated three or four times. Since at least two-thirds of the doses were excreted as hypophosphite in the urine each time, the authors concluded that hypophosphites were not used as a source of phosphate by the cows. Half of the hypophosphite excreted appeared within 2 hours, and a diuretic effect was noted during the period of hypophosphite excretion.

Studies on the acute toxicity of sodium hypophosphite and sodium phosphite were reported by Engel in 1924. He found hypophosphite to be less toxic than phosphite. The subcutaneous injection of 0.1 g of sodium phosphite killed frogs in a few hours, 0.15 to 0.20 g (about 7.5 g per kg) killed mice, and 0.2 to 0.5 g (about 500 mg per kg) killed guinea pigs. Similiar doses of sodium hypophosphite failed to kill frogs and guinea pigs; however, 0.2 g killed mice. Other workers measured the acute toxicity of sodium hypophosphite injected intraperitoneally in male Swiss albino mice. They calculated the LD_{50} (30 days) to be 1,584 mg per kg.

Two studies deal with the effect of feeding hypophosphite to rats. Takahashi placed 60 g male white rats on a phosphorus deficient basal diet containing 0.055 percent phosphate as P_2O_5 (about 20 mg P per kg body weight) from meat sources. Calcium level in the basal diet is estimated to have been about 3.2 mg per g diet (500 mg per kg body weight). He added various concentrations of hypophosphorous acid to the basal diet and found no growth over a period of 4 months at concentrations up to 0.5 percent (about 800 mg per kg); at 1.5 to 2 percent levels (2,400 to 3,200 mg per kg) the animals died within a few days. Presumably hypophosphorous acid is not oxidized and used as a source of phosphate to any appreciable extent under these experimental conditions. However, Meyer and Greenberg in evaluating calcium hypophosphite as a calcium source found that rats showed good growth on diets containing 0.43 to 4.3 percent calcium hypophosphite (about 430 to 4,300 mg per kg body weight). Groups of seven to eight young Sprague-Dawley rats were fed for 25 days a basal diet containing 0.33 percent phosphorus (330 mg per kg) and 0.03 percent calcium (30 mg per kg) supplemented with 0.43, 2.1, or 4.3 percent calcium hypophosphite; 0.43 percent each of calcium and sodium hypophosphites; 0.43, 3.0, or 4.3 percent calcium hypophosphite, each with added nucleic acid to equalize phosphorus and calcium levels without the addition of a phosphate salt; 0.43 percent dibasic calcium phosphate; 10.8 percent calcium gluconate or 2.5 percent calcium carbonate as alternate calcium sources. Growth was not depressed by calcium hypophosphite, and assimilation of calcium was about the same whether supplied by hypophosphite, gluconate, phosphate, or carbonate. Because the phosphorus level in the basal diet was sufficient to prevent phosphorus deficiency, no conclusion was reached concerning utilization of phosphorus in hypophosphites.

No direct information on the biological effects of manganous hypophosphite was available to the Select Committee. However, manganese is an essential nutrient and considerable information has been reported on the biological effects of manganous ion. This information has been reviewed by the Select Committee in an evaluation of other manganous salts as food ingredients. It was concluded that the available information indicates a wide margin exists between present intake levels of manganous ion and levels that have been reported to produce harmful effects. This information can be extended to manganous ion in manganous hypophosphite. No reports were available on long-term animal toxicity, carcinogenicity, teratogenicity, or mutagenicity of hypophosphites.

Qualified scientists of the Select Committee have carefully evaluated all available safety information on these hypophosphites. The Select Committee believes that:

The hypophosphites do not appear to be currently used as ingredients in foods as indicated by a survey of the food industry conducted by a National Research Council subcommittee in 1970 and more recent information obtained from industry by the Select Committee. They had limited medical use many years ago in tonics and as therapeutic agents but appear to be no longer used for these purposes.

The acute toxicity of hypophosphites is relatively low; injected intraperitoneally in mice, the LD_{50} (30 days) for the sodium salt was 1.6 g per kg body weight. Calcium and sodium hypophosphites given orally or parenterally to experimental animals and man are rapidly excreted as hypophosphites in the urine. It is the opinion of the Select Committee that potassium hypophosphites is comparable to the sodium salt in excretion and toxicity.

Although animal feeding experiments indicate that the phosphorus in hypophosphites is not biologically available, no adverse effects were reported in young rats fed diets containing calcium hypophosphite (up to 4.3 g per kg). Growth and calcium assimilation were as good as observed on diets containing salts recognized as good sources of calcium.

Although no reports were available on the biological effects of manganese hypophosphite, an evaluation of the health aspects of other manganous salts by the Select Committee has found no evidence that would indicate a hazard from manganous hypophosphite if used as a nutrient or dietary supplement.

The Select Committee concludes that no evidence in the available information on manganous, calcium, potassium, or sodium hypophosphite has demonstrated, or suggests reasonable grounds to suspect, a hazard to the public when those substances are used in the manner now practiced and at the levels that are now current or that might reasonably be expected in the future. Based upon his own evaluation of all available information on the hypophosphites, the Commissioner finds there is no indication that these ingredients are currently used in food. The Commissioner requested use information for these and other GRAS ingredients in a notice published in the FEDERAL REGISTER of May 31, 1977 (42 FR 27676) and received no responses concerning hypophosphites. The Commissioner therefore proposes that calcium, manganese, potassium, and sodium hypophosphites be removed from GRAS status as direct human food ingredients unless evidence of their use (foods that the substances are added to, levels of addition, intended technical effects, and food-grade specifications) is submitted during the comment period on this proposal. It should be emphasized that use information is very important in judging the safety of food ingredients because it facilitates assessment of total dietary intake. In addition to being the subject of comments on this proposal, these substances can receive further consideration through a petition submitted under § 170.35 (21 CFR 170.35) or § 171.1 (21 CFR 171.1). Additionally, sodium, potassium, and manganese hypophosphites were included in the 1977 National Academy of Sciences/National Research Council (NAS/NRC) industry usage survey. If any usage information is submitted to FDA by NAS when the compilation of this survey is completed, the Commissioner will reconsider the GRAS status of hypophosphites based on this new usage information.

Copies of the scientific literature review on the hypophosphites and the report of the Select Committee are available for review at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22151, as follows:

Title	Order No.	Price code	Price*
Hypophosphites (scientific literature review)	PB-228-544/AS	A02	$4.00
Hypophosphites (select committee report)	PB-274-476/AS	A02	4.00

*Price subject to change.

This proposed action does not affect the present use of hypophosphites for pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(d), 701 (a) and (e), 52 Stat. 1055, 70 Stat. 919 as amended, 72 Stat. 1784-1787 as amended (21 U.S.C. 321(s), 348(d), 371(a), 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that part 182 be amended by deleting:

§ 182.5458 Manganese hypophosphite.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those discussed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under part 181 (21 CFR Part 181) incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before December 11, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order.

Dated: September 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-28335 Filed 10-6-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Parts 803 and 888]

[Docket No. R-78-576]

SECTION 23 AND SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Amendment of Schedule B—Fair Market Rents for Section 8 Existing Housing and Section 23 Existing Housing

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend the note to the schedules that set forth fair market rents for the section 23 and section 8 housing assistance payments programs for existing housing to provide for fair market rents for unit sizes larger than six bedrooms. This action is taken in order to facilitate participation in the program by families requiring more than six bedrooms.

COMMENTS DUE: November 9, 1978.

ADDRESS: All materials which persons wish to submit should be sent to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Copies of comments should be concurrently submitted to the appropriate HUD field office. A copy of each comment will be available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Bernard Horn, Acting Director, Office of Economic and Market

Analysis, P.D. & R., HUD, Washington, D.C. 20410, 202-755-5870. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: At the present time, HUD has published fair market rents for unit sizes up to four bedrooms and established procedures for the calculation of fair market rents for five and six bedroom units. In order to facilitate participation in the program by families requiring more than six bedrooms, HUD is providing instructions for the calculation of fair market rents for unit sizes larger than six bedrooms. The note to the schedule of fair market rents is being amended to provide a formula for determining fair market rents for units with more than six bedrooms.

Interested persons are invited to submit written comments or suggestions to the rules docket clerk at the address set forth above and directly to the appropriate HUD field office. Communications should identify the subject matter by title, docket number, and date of publication. Each comment received on or before the date specified above will be considered before adoption of the final rule.

HUD has determined that this regulation does not constitute a major Federal action significantly affecting the quality of human environment. Accordingly, a finding of inapplicability of environmental impact has been prepared and is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, at the address specified above.

Accordingly, the note to title 24, part 888, schedule B and part 803, schedule B is revised to read:

NOTE.—Fair market rents (FMR) shall be calculated for five and six bedroom units as follows: 5-BR=150 percent of 2-BR FMR; 6-BR=175 percent of 2-BR FMR. Likewise, the fair market rents for unit sizes larger than six bedrooms shall be calculated by adding 25 percent to the percentage used for the next lower number of bedrooms.

This notice of proposed rulemaking is issued under the authority of section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., September 27, 1978.

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

[FR Doc. 78-28363 Filed 10-6-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 984-4]

Proposed Revision to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal announces receipt of a request from the State of Massachusetts to revise its State implementation plan (SIP). If approved by the Environmental Protection Agency (EPA) this revision would allow the burning of a 30 percent to 70 percent coal/oil mixture in the New England Power Co. (NEPCo) Unit No. 1, Salem Harbor Station, Salem, Mass., for a period of 1 year, as a research project funded by the U.S. Energy Research and Development Administration (ERDA). The request includes variances from sulfur in fuel and visible emissions regulations in the Metropolitan Boston Air Quality Control Region (AQCR). Comments are solicited on the effect of this revision.

DATES: Comments must be received on or before November 9, 1978.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, room 2113, J. F. K. Federal Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and Massachusetts Department of Environmental Quality Engineering, Air and Hazardous Materials Division, room 320, 600 Washington Street, Boston, Mass. 02111. Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, room 2203, J. F. K. Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

Victor M. Trinidad, Air Branch, EPA Region I, room 2113, J. F. K. Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: On July 5, 1978 the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted a request to the Environmental Protection Agency (EPA) to approve a proposed revision to the Massachusetts State implementation plan (SIP) for variances to Massachusetts regulations 310 CMR 7.05 (formerly regulation 5) and 310 CMR 7.06 (formerly regulation 6), sulfur in fuel and visible emissions, respectively.

Under the proposed SIP revision, the request will allow New England Power Co's. (NEPCo) Unit No. 1, Salem Harbor Station, Salem Mass. to burn a 30 percent to 70 percent coal/oil mixture as a research and development project funded by the Energy Research and Development Administration (ERDA). The plant will be burning fossil fuel with a maximum sulfur content of 1.21 pounds per million Btu release potential (approximately equivalent to 2.2 percent sulfur content residual fuel oil by weight) from January 1 to December 31, 1979. The second variance, if approved by EPA, will relax the Ringelmann requirements from 6 to 15 minutes during optimization runs.

On December 5, 1975 (40 FR 56889) the Regional Administrator approved a temporary revision to the Massachusetts SIP, applicable to the Metropolitan Boston Intrastate Air Quality Control Region (AQCR) which relaxed the sulfur in fuel limitations contained in regulation 5.1, "Sulfur Content of Fuels and Control Thereof," until July 1, 1977. The regulation permits fossil fuel utilization facilities located in the cities and towns of Arlington, Belmont, Boston, Brookline, Cambridge, Chelsea, Everett, Malden, Medford, Newton, Somerville, Waltham, and Watertown having an energy input capacity of 2½ billion Btu per hour or greater to burn fossil fuel with a sulfur content not in excess of 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0 percent sulfur content residual oil by weight). All other sources located in these cities and towns are continuing to burn fossil fuel with a sulfur content not in excess of 0.28 pounds per million Btu heat release potential (approximately equivalent to 0.5 percent sulfur content residual fuel oil by weight), in accordance with the original SIP regulation. For other towns in the AQCR (Salem included) facilities having an energy imput capacity of 100 million Btu per hour or greater are permitted to burn fossil fuel with a sulfur content not in excess of 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent sulfur content residual fuel oil by weight), and other sources are limited to burning fossil fuel with a sulfur content not in excess of 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0 percent sulfur content residual fuel oil by weight), in accordance with original SIP regulations.

A SIP revision approved by the Administrator on August 22, 1977 (42 FR 42218) extended the effective period of regulation 5.1 from July 1, 1977 to

July 1, 1978. On June 22, 1978 the Regional Administrator published in the FEDERAL REGISTER a notice of proposed rulemaking for approval of an additional extension to the final date up to July 1, 1979. EPA's final decision on the extension will be published in the near future.

The aforementioned request will allow NEPCo's Unit No. 1, to burn the coal/oil mixture with a maximum sulfur content of 1.21 pounds per million Btu heat release potential until December 31, 1979, 6 months beyond the July 1, 1979 expiration date of regulation 310 CMR 7.05.

The requested variance to regulation 310 CMR 7.06 will also relax from six (6) to fifteen (15) minutes the Ringlemann and opacity requirement during combustion optimization test runs. The plume opacity shall at no time be equal to or greater than 40 percent or No. 2 of the Ringlemann chart.

The requested variances were filed with the Massachusetts Department by MEPCo representatives on April 1, 1977. Intially, in addition to the sulfur in fuel and visible emission variances, a third variance to particulate emissions regulations was requested. On December 12, 1977, NEPCo amended their request and formally withdrew the particulates variance.

On May 18, 1978 the Massachusetts Department, after appropriate hearings conducted July 20, 1977, approved NEPCo's request with the following provisions: (1) that the project shall be commenced using the following coal/oil slurry, 10 percent to 90 percent coal/oil respectively, and then gradually progressing to 20 percent to 80 percent coal/oil, and then to maximum 30 percent to 70 percent coal/oil, if feasible; (2) that stack testing shall take place after each increment and compliance with the particulate emission limitation (0.12 lbs/mm Btu) and all other applicable regulations shall be demonstrated prior to any increase in coal/oil slurry ratio; (3) if nuisance conditions occur as a result of any coal handling or burning operations, then the variance shall be subject to immediate termination; (4) the variances shall expire 1 year after NEPCo commences the case of the coal/oil slurry and in no case shall terminate later than December 1979.

This notice is issued as required by section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether the proposed revision to the Massachusetts State implementation plan should be approved or disapproved.

The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of sections 110(a)(A)-(H) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: September 20, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc. 78-28310 Filed 10-6-78; 8:45 am]

[6560-01-M]

[40 CFR PART 52]

[FRL 984-5]

STATE OF VIRGINIA

Proposed Revision of the State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On November 30, 1977, the Commonwealth of Virginia sumitted a proposed amendment to the Virginia State implementation plan (SIP), under the Clean Air Act, and has requested that this amendment be reviewed and approved as a revision to the Virginia SIP. The proposed amendment provides for the reduction of nonmethane hydrocarbon emissions through a program of substitution of emulsion-based asphalt for "cutback material" (of nonmethane hydrocarbon based asphalts). Approval of the proposed amendment would satisfy the requirements of section 129(a)(1) of the 1977 Clean Air Act Amendments and the EPA December 21, 1976 interpretative ruling for the proposed Hampton Roads Energy Co. oil refinery in Portsmouth, Va.

DATES: Comments must be received on or before November 9, 1978.

ADDRESSES: Comments should be sent to Mr. Howard Heim, Chief, Air Programs Branch, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106.

Copies of the proposed revision of the Virginia SIP and accompanying support documentation are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pa. 19106, attention: Mr. Glenn Hanson.

Virginia State Air Pollution Control Board, Region VI, Pembroke One, Suite 610, 281 Independence Boulevard, Virginia Beach, Va. 23462, attention: Mr. Lucien B. McDonald.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Glenn Hanson, Air and Hazardous Materials Division, 215-597-8170.

SUPPLEMENTARY INFORMATION: The purpose of this proposed amendment to the Va SIP, pursuant to section 129(a)(1) of the 1977 Clean Air Act Amendments and the EPA December 21, 1976 interpretative ruling (Ruling) (41 FR 55524), is to offset nonmethane hydrocarbon emissions resulting from the construction and operation of the proposed Hampton Roads Energy Co. oil refinery in Portsmouth, Va. As required by the Ruling, a new major stationary source may construct in an area currently exceeding any national ambient air quality standard(s) (NAAQS) only under certain conditions. One condition is the following: If there are achieved in that area (exceeding NAAQS[s]) emission reductions that more than offset air pollutants which cause or contribute to a violation of any NAAQS, then construction of the new source can be permitted. The geographical area within which the Hampton Roads Energy Co. oil refinery is proposed to be located is exceeding the NAAQS for photochemical oxidants. Nonmethane hydrocarbons have been determined to be a major contributor to the formation of ozone ambient air quality levels. Therefore, nonmethane hydrocarbon emission offsets are required to accommodate the construction and operation of the proposed Hampton Roads Energy Co. oil refinery.

The proposed revision to the Virginia SIP will result in a decrease of two thousand, one hundred and thirteen (2,113) tons per year of nonmethane hydrocarbons in a three-highway paving district area surrounding the proposed site of the oil refinery.

At no time will nonmethane hydrocarbon emissions from oil refinery storage facilities, process combustion, and fugitive sources exceed one thousand, two hundred and ninety-three (1,293) tons per year. This level of control of nonmethane hydrocarbon emissions from the operation of the oil refinery is required as a permit condition enforceable by the State and Federal governments. Any nonmethane hydrocarbon emissions which may result from other operations associated with the oil refinery (e.g., unloading of crude and loading of finished products) may require additional emission offsets and those emission offsets would have to be proposed as revisions to the Virginia SIP and approved by EPA.

The public is invited to submit comments on whether the amendment

submitted by the Commonwealth of Virginia should be approved or disapproved as a revision of the Commonwealth of Virginia State implementation plan.

The Administrator's decision to approve or disapprove this proposed SIP revision will be based on whether the amendment submitted by the Commonwealth of Virginia meets the requirements of section 110 of the Clean Air Act, 129(a)(1) of the 1977 Clean Air Act Amendments,, The EPA December 21, 1976 interpretative ruling, and 40 CFR Part 51, "Requirements for Preparation, Adoption, and Sumittal of Implementation Plans."

(42 U.S.C. 7401.)

Dated: September 26, 1978.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 78-28309 Filed 10-6-78; 8:45 am]

[6560-01-M]

[40 CFR Part 162]

[FRL 984-1; OPP-210012]

DRAFT INTERIM FINAL REGULATIONS FOR CONDITIONAL REGISTRATION

Open Public Meeting

AGENCY: Office of Pesticide Programs, U.S. Environmental Protection Agency (OPP, EPA).

ACTION: Notice of open public meeting.

SUMMARY: In accordance with Executive Order 12044, EPA will convene a public participation meeting on Monday, November 6; Tuesday, November 7; and Wednesday, November 8, 1978, to solicit comments and information from industry, environmental groups, and the public on regulations concerning conditional registration of pesticides. It is the Agency's intention to present the following key issues for discussion: Risk assessment criteria Policy—Monday, November 6, 1978; data review and compensation—Tuesday, November 7, 1978; and related topics—Wednesday, November 8, 1978. The working group responsible for developing regulations for conditional registration under section 3(c)(7) of the Federal Pesticides Act of 1978 will discuss with interested parties a working draft of regulations for conditional registration and related matters, including compensation. A document concerning development of these regulations was previously published in the FEDERAL REGISTER on July 25, 1978 (43 FR 32154). Copies of the working drafts will be available in advance of the meeting, and will be distributed at the meeting.

DATES: Meeting sessions will be held November 6, 7, and 8, 1978, from 10 a.m. to 4 p.m. See "Summary" above.

ADDRESS: The meeting hours will be 10 a.m. to 4 p.m. in rooms 3906 and 3908 of the Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Robert Rose or Jean Frane, Environmental Protection Agency, Office of Pesticide Programs (TS-767), Room 345, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-426-2510.

Dated: October 2, 1978.

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

[FR Doc. 78-28313 Filed 10-6-78; 8:45 am]

[6820-23]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[41 CFR Part 101-20]

MANAGEMENT OF BUILDINGS AND GROUNDS

Smoking in GSA-Controlled Buildings and Facilities; Extension of Comment Period of Proposed Rulemaking

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for comments to the proposed rule, published September 11, 1978 (43 FR 40250), proposing to prohibit smoking in certain areas of buildings controlled by GSA. Requests for additional commenting time were received. This notice extends the comment period to November 11, 1978.

DATE: Comments must be received on or before November 11, 1978.

ADDRESS: Comments should be addressed to the General Services Administration (PBOP), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT:

Mr. Donald Winegarden, Director, Operations Division, Office of Buildings Management, General Services Administration, Washington, D.C. 20405, 202-566-1563.

Dated: October 2, 1978.

JAMES B. SHEA, JR.,
Commissioner, Public Buildings Service.

[FR Doc. 78-28347 Filed 10-6-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 218]

[Docket No. RSOR-3, Notice 17]

BLUE SIGNAL PROTECTION OF WORKMEN

Correction

In FR Doc. 78-27824 appearing at page 45416 in the issue for Monday, October 2, 1978, the following corrections should be made:

1. On page 45420, § 218.5(h) should read as follows:

"(h) 'Locomotive' means a self-propelled unit of equipment designed for moving other equipment in revenue service including a self-propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control."

2. On page 45421, § 218.25(b) should read as follows:

"(b) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive; and"

[4910-22-M]

Federal Highway Administration

[49 CFR Part 393]

[BMCS Docket No. MC-56-1; Notice No. 78-12]

FRONT TIRE MARKING REQUIREMENTS

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration issues this notice to solicit comments and information on its intent to amend the Federal Motor Carrier Safety Regulations. The amendment would provide further exemptions from requirements for front tire markings and for tire loading on vehicles operating under a special permit issued by one of the States and operating at reduced speed.

DATE: Written comments must be received on or before January 8, 1979.

ADDRESSES: Submit comments (original and 2 copies) to BMCS Docket No. 56-1; Notice No. 78-12, Room 3402, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Donnell W. Morrison, Chief, Vehicle Requirements Branch, Bureau of Motor Carrier Safety, 202-426-1700; or Mrs. Kathleen S. Markman, Office of Chief Counsel, Motor Carrier and Highway Safety Law Division, 202-426-0790; Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.d.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice proposes an amendment to 49 CFR 393.75(f) to: (1) Exempt front tires from the DOT tire load marking requirements (49 CFR 571.119) on single unit property carrying vehicles and all property carrying vehicles operated in exempt intracity operation as set forth in section 390.16 (49 CFR 390.16), and and (2) further modify the exemption of tire loading requirements for other than front tires for vehicles operating under a special permit issued by one of the several States.

Section 393.75(f) of the Federal Motor Carrier Safety Regulations (FMCSR) as amended November 24, 1976, postponed the date that a front tire had to be in compliance with DOT tire marking requirements. Several portions of a petition filed by the American Trucking Associations, Inc. (ATA), were not considered in the cited amendment and the notice stated the outstanding petition would be dealt with in a future notice of proposed rulemaking. The issues not handled were those mentioned above pertinent to single unit vehicles and commercial zones.

The petitioner stated: (a) Single unit trucks were not involved in many accidents; (b) several years' tire life was not unusual; and (c) that operators of single unit vehicles usually only had one or two units and these may not accumulate many miles in a year's time. The lower mileage and fewer accidents of single unit vehicles, therefore, was offered as justification for relaxing the requirement for front tire marking for these vehicles.

The petitioner also asked for relief from front tire marking requirements for all property carrying vehicles operating in a municipality or the commercial zone thereof. This request is based on the fact that vehicles transporting hazardous materials and required to be placarded have to meet all of the requirements of part 393, including the tire marking requirement. The petitioner contends that a motor carrier does not always know if a pickup and delivery vehicle will have enough hazardous materials to require placards.

Accident report data for 1976 and 1977 received by FHWA indicates that a total of 1,014 wheel and tire failures were reported. Of this number, 934 involved over-the-road operations and 74 were local pickup and delivery. No information was reported as to type of operation for the 6 remaining accidents.

If only single unit vehicles are considered there were 61 accidents reported, about 6 percent of the total. Thirty-five were over-the-road operations, 25 local pickup and delivery, and 1 not reported. The remaining 94 percent of the accidents reported, 953, were attributed to combination vehicles. Of these, 899 were over-the-road operations, 49 in local pickup and delivery operations, and in the remaining 5 the type of operation was not reported. The numbers cited above were from a total of 54,192 accidents—5,373 single unit vehicles and 48,819 combinations. In brief, less than 2 percent of the accidents reported to FHWA resulted from wheel and tire failure.

This information does indicate that single unit vehicles are not usually involved in wheel and tire failure accidents. Also, wheel and tire failures in local pickup and delivery operations occur very seldom, regardless of the type of vehicle.

The Department of Housing and Urban Development (HUD) has issued standards for mobile homes. These standards permit tires to be loaded to 150 percent of their rated capacity.

Questions have been raised as to whether it is safe to allow a tire to be loaded to 150 percent of its rated capacity. The HUD has had two series of tests run on mobile home tires. One series was on new tires, the other on used tires. The tests indicated that new tires on mobile homes were capable of operating satisfactorily under 150 percent loading.

The HUD also sponsored tests of used mobile home tires. The tests were identical in nature to those run on new tires. The used tires tested included those manufactured before and after the tire standards contained in Federal Motor Vehicle Safety Standard (FMVSS) No. 119 went into effect. These tests indicated that the used tires do not perform as will as new tires. There were 3 failures out of 22 tires tested. One tire completed the test but had blisters on the sidewall. The tests were probably more severe than would be expected to be encountered during transportation of vehicle homes over the highway.

In consideration of the foregoing it is hereby proposed to amend Title 49, Code of Federal Regulations, Chapter III, Part 393 as follows:

Paragraphs (f)(1) and (2)(i) of § 393.75 are amended to read as follows;

§ 393.75 Tires.

* * * * *

(f) *Tire load rating.*[1] (1) Front wheels. No motor vehicle shall be operated with tires on the front wheels which carry a greater weight than that specified for the tires in any of the publications of the standardizing bodies listed in FMVSS No. 119 (49 CFR 571.119) and marked on the sidewall of the tire, except that tires on single unit property carrying vehicles and all property carrying vehicles operating in exempt intracity operations as defined in section 390.16 may use tires that do not have the FMVSS No. 119 load rating marked on them, but the load on the tire may not exceed that allowed by FMVSS No. 119 for the same size tire.

(2) * * *

(i) The vehicle is being operated under the terms of a special permit issued by the State; and

* * * * *

Interested persons are invited to submit written data, views, or arguments pertaining to adoption of the amendment proposed above.

All comments should refer to the docket number and notice that appear at the top of this document and should be submitted in three copies to the above address.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to E.O 12044.

AUTHORITY: Sec. 204, 49 Stat. 546 as amended (49 U.S.C. 304); sec. 6, Pub. L. 89-670, 80 Stat. 93.7 (49 U.S.C. 1655); 49 CFR 1.48 and 49 CFR 301.60.

Issued on September 27, 1978.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety.

[FR Doc. 78-28350 Filed 10-6-78; 8:45 am]

[1]Footnote text unchanged.

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-M]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS ACT ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following Committee meeting:

NAME: Grain Standards Act Advisory Committee.

DATE: October 25, 1978.

PLACE: U.S. Department of Agriculture, 1400 Independence Avenue, SW., room 6451 South Building, Washington, D.C. 20250.

TIME: 9 a.m.

PURPOSE: Allow for the Committee members to review, discuss and make recommendations to the Administrator, Federal Grain Inspection Service on the study draft regulation. Summary published in the FEDERAL REGISTER on July 31, 1978.

The meeting is open to the public space and facilities are limited. Public participation will be limited to written statements submitted before or at the meeting unless their participation is otherwise requested by the Committee Chairman. Persons other than members who wish to address the Committee at the meeting should contact Dr. Leland E. Bartelt, Administrator, U.S. Department of Agriculture, Federal Grain Inspection Service, Washington, D.C., 20250, telephone 202-447-9170.

Dated: October 3, 1978.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 78-28487 Filed 10-6-78; 8:45 am]

[3410-16-M]

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

UPPER BIG SWAMP CREEK WATERSHED, ALA.

Intent to Not File an Environmental Impact Statement for Deauthorization of Funding of the Upper Big Swamp Creek Watershed

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for deauthorization of funding of the Upper Big Swamp Creek Watershed, Lowndes County, Ala.

The environmental assessment of this action indicates that deauthorization of funding of the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. William B. Lingle, State conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

The notice of intent to not prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, 138 South Gay Street, Auburn, Ala. 36830, 205-821-8070. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal is available to fill single copy requests.

No administrative action on the proposal will be taken until December 11, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: September 27, 1978.

NORMAN A. BERG,
Associate Administrator.

[FR Doc. 78-28351 Filed 10-6-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 30777; Agreement C.A.B. 27546; R-1 through R-7; Order 78-9-152]

UNITED STATES-SOUTH AMERICA FREE-BAGGAGE ALLOWANCE AND EXCESS-BAGGAGE CHARGES

Order

SEPTEMBER 29, 1978.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and part 261 of the Board's economic regulations, between various U.S. and foreign member air carriers of the International Air Transport Association (IATA). It was adopted at the TC1 Passenger Traffic Conference held in Miami during July and August 1978.

The agreement, proposed for effectiveness October 15, 1978, through March 31, 1980, would establish new free-baggage allowances and excess-baggage charges for passenger air transportation between the United States and Canada, on the one hand, and most South American countries, on the other.[1]

The proposed allowances and charges are based on a piece system (rather than a weight system) like that established between the United States and many other world areas, as conditioned and approved by the Board by order 77-4-97, April 20, 1977. The proposed free allowances would permit first-class passengers to check two pieces of 62 inches (length plus width plus depth) each; economy-class passengers could check two pieces, either of which could be as large as 62 inches, provided that their sum does not exceed 107 inches; and all passengers would be permitted a carry-on piece of no more than 45 inches, provided that it could be stowed under the seat.

Excess-baggage charges, for oversized and/or additional pieces, would be levied on a per-piece basis at amounts varying with origin and destination. From Miami, for example, the charges for an excess piece would be $30 to Panama, $35 to Peru, $40 to Bo-

[1] The agreement covers transportation to and from Argentina, Bolivia, Brazil, Chile, Panama, Paraguay, Peru, and Uruguay, but excludes Colombia, Ecuador, French Guiana, Guyana, Surinam, and Venezuela.

livia, and $50 to Argentina, Brazil, Chile, Paraguay, and Uruguay; the charges would be lower for Puerto Rico and the U.S. Virgin Islands and slightly higher for all other U.S. points. The agreement also provides for special treatment of such items as golf, ski and camping equipment, bicycles, and dogs trained to assist the blind and/or deaf.

We will approve the agreement.

The provisions and charges contained in the agreement conform with our conclusion in *Baggage Allowance Tariff Rules in Overseas and Foreign Air Transportation*, docket 24869,[2] that weight should not be the sole factor determining the value of baggage service. Moreover, the terms of the agreement are virtually identical to those we found reasonable in order 77-4-97. We commend the participating carriers for finally reaching agreement on such an important issue.

Pursuant to sections 102, 204(a), and 412 of the Act, we do not find that the following resolutions, which have direct application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
27546:			
R-1	LA21	TC1 Limited Agreement—Baggage	1
R-2	001ff	Special Baggage Escape (new)	1
R-3	304	Carriage of Baggage at Cargo Rates U.S.A./Canada-South America (new).	1
R-4	310	Free Baggage Allowance U.S.A./Canada-South America (new).	1
R-5	310c	Pets—U.S.A./Canada-South America (new).	1
R-6	311	Excess Baggage Charges U.S.A./Canada-South America (new).	1
R-7	311e	Charges for Bulky Baggage U.S.A./Canada-South America (new).	1

Accordingly: We approve Agreement CAB 27546.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-28281 Filed 10-6-78; 8:45 am]

[6320-01-M]

[Docket 28760]

AMERICAN ASSN. ZOOLOGICAL PARKS v. AMERICAN AIRLINES, INC.

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Greer M. Murphy to Administrative Law Judge John J. Mathias. Future communications should be addressed to Judge Mathias.

Dated at Washington, D.C., October 4, 1978.

NAHUM LITT,
Chief Administrative Law Judge.

[FR Doc. 78-28516 Filed 10-6-78; 8:45 am]

[6320-01-M]

[Docket 30233]

ATLANTA-SEATTLE/PORTLAND SUBPART N PROCEEDING

Postponement of Hearing

On motion of counsel for the Bureau of Pricing and Domestic Aviation and without objection by counsel for Aeroamerica, Inc., the hearing herein regarding the application of Aeroamerica, Inc., heretofore postponed to October 4, 1978 (43 FR 45422, October 2, 1978), is further postponed to October 20, 1978 at 9 a.m. (local time) and will be held in Room 1003, Hearing Room B, 1875 Connecticut Avenue NW., Washington, D.C. 20428

Dated at Washington, D.C., October 3, 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-28519 Filed 10-6-78; 8:45 am]

[6320-01-M]

[Docket 32485]

BALTIMORE/WASHINGTON-ST. LOUIS ROUTE PROCEEDING

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Greer M. Murphy to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., October 3, 1978.

NAHUM LITT,
Chief Administrative Law Judge.

[FR Doc. 78-28578 Filed 10-6-78; 8:45 am]

[6320-01-M]

[Docket 33465]

CONTINENTAL-WESTERN MERGER CASE

Prehearing Conference

A prehearing conference will be held in this proceeding on October 24, 1978, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C.

On or before October 10, 1978, the merger applicants are to serve copies of their exhibits J-100 through J-805 to all persons who have petitioned to intervene in this proceeding who have not already received those exhibits.[1] The Bureau of Pricing and Domestic Aviation is to circulate its prehearing

[2] See orders 76-3-81, served Mar. 12, 1976, and 76-5-26, May 10, 1976.

[1] On or about September 20, 1978, the applicants distributed copies of these exhibits to the Board, various other governmental agencies, all certificated air carriers, and various other persons. See the service list attached to the joint application.

conference materials[2] by October 12, 1978. All persons proposing to intervene are to circulate their prehearing conference materials by October 19.

Dated at Washington, D.C., October 3, 1978.

STEPHEN J. GROSS,
Administrative Law Judge.

[FR Doc. 78-28517 Filed 10-6-78; 8:45 am]

[6320-01-M]

[Dockets 33112 and 33283]

TEXAS INTERNATIONAL—NATIONAL ACQUISITION CASE AND PAN AMERICAN—ACQUISITION OF CONTROL OF, AND MERGER WITH NATIONAL

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on October 31, 1978, at 10 a.m. (local time) in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned administrative law judge.

For details of the issues involved in this proceeding, interested persons are referred to the prehearing Conference Report, served on September 25, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., October 4, 1978.

WILLIAM H. DAPPER,
Administrative Law Judge.

[FR Doc. 78-28515 Filed 10-6-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ALASKA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alaska Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 11 a.m. on October 28, 1978, in the Anchorage Westward Hilton, 500 West Third Avenue, Anchorage, Alaska.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northwestern regional office of the Commission, 915 Second Avenue, Room 2852, Seattle, Wash. 98174.

[2] "Prehearing conference materials" include proposed statements of issues, proposed stipulations, requests for information and evidence, statements of position and proposed procedural dates.

The purpose of this meeting is to discuss program planning for fiscal years 1979, 1980, and 1981.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28500 Filed 10-6-78; 8:45 am]

[6335-01-M]

ARKANSAS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Arkansas Advisory Committee (SAC) of the Commission will convene at 8:45 a.m. and will end at 10 p.m. on November 3, 1978, in Southeast Arkansas Arts and Science Center, 200 East Eighth Avenue (Civic Center), Pine Bluff, Ark. 71601, and again on November 4, 1978, at 8:45 a.m. to 6 p.m. at the Forrest City Civic Center, 1335 Washington Avenue, Forrest City, Ark. 72335.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the southwestern regional office of the Commission, 106 Broadway, San Antonio, Tex. 78205.

The purpose of these meetings will be that the Arkansas Advisory Committee will hold hearings on the community development block grant program.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28501 Filed 10-6-78; 8:45 am]

[6335-01-M]

IDAHO ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Idaho Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 4 p.m. on November 4, 1978, in the Rodeway Inn, Malheur Room, 29th and West Chinden, Boise, Idaho 83704.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northwestern regional office of the Commission, 915 Second Avenue, Room 2852, Seattle, Wash. 98174.

The purpose of this meeting is to discuss program planning for fiscal year 1979, 1980, and 1981; to review draft report on migrant housing project; and to discuss rechartering.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28502 Filed 10-6-78; 8:45 am]

[6335-01-M]

INDIANA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Indiana Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 10 p.m. on October 30, 1978, in the Ramada Inn, 1530 North Meridian Street, Indianapolis, Ind. 46202.

Persons wishing to attend this open meeting should contact that Committee chairperson, or the midwestern regional office of the Commission, 230 South Dearborn Street, 32d floor, Chicago, Ill. 60604.

The purpose of this meeting is to discuss and review a project proposal on the employment of minorities and women in the city of Indianapolis municipal workforce.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28503 Filed 10-6-78; 8:45 am]

[6335-01-M]

IOWA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Iowa Advisory Committee (SAC) of the Commission will convene at 3 p.m. and will end at 5 p.m. on November 9, 1978, in the Ramada Inn Downtown, 929 Third Street, room 208, Des Moines, Iowa 50309.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Central States regional office of the Commission, 911 Walnut Street, Kansas City, Mo. 64106.

The purpose of this meeting is to review status of current programs and develop input in USCCR, fiscal years 1980 and 1981 national programs.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28504 Filed 10-6-78; 8:45 am]

[6335-01-M]

MAINE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Maine Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 9:30 p.m. on October 26, 1978, at Maine Teachers Association, Augusta, Maine.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28505 Filed 10-6-78; 8:45 am]

[6335-01-M]

NEBRASKA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nebraska Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 2 p.m. on October 23, 1978, in the Hacienda Restaurant, West Highway 20, Gordon, Nebr.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Central States regional office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Mo. 64106.

The purpose of this meeting will be to discuss the final statement on the Omaha private sector employment report, review the subcommittee activity relative to the western Nebraska health case study and plan activities. This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28506 Filed 10-6-78; 8:45 am]

[6335-01-M]

NEW JERSEY ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the New Jersey Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 9:30 p.m. on October 23, 1978, in the Ramada Inn, New Brunswick, N.J.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28507 Filed 10-6-78; 8:45 am]

[6335-01-M]

NEW YORK ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference of the New York Advisory Committee (SAC) of the Commission will convene at 5:30 p.m. and will end at 9 p.m. on October 20, 1978, in the Philippine Center, 565 Fifth Avenue, New York, N.Y.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is an approval of findings and recommendations of the conference, "Asian Americans: Agenda for Action" plan press conference to release findings and recommendations.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28508 Filed 10-6-78; 8:45 am]

[6335-01-M]

NEW YORK ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the New York Advisory Committee of the Commission will convene at 4:30 p.m. and will end at 6:30 p.m. on November 8, 1978, at Phelps Stokes Fund, 10 East 87th Street, New York, N.Y.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28509 Filed 10-6-78; 8:45 am]

[6335-01-M]

OREGON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oregon Advisory Committee (SAC) of the Commission will convene at 5 p.m. and will end at 7:30 p.m. on October 30, 1978, in the Thunderbird Motor Inn at Jansen Beach, 1401 North Hayden Island Drive, Portland, Oreg. 97217.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northwestern regional office of the Commission, 915 Second Avenue, Room 2852, Seattle, Wash. 98174.

The purpose of this meeting is to discuss program planning for fiscal years 1979, 1980, and 1981; and to discuss rechartering.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28510 Filed 10-6-78; 8:45 am]

[6335-01-M]

PENNSYLVANIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Pennsylvania Advisory Committee (SAC) of the Commission will convene at 11 a.m. and will end at 3 p.m. on November 16, 1978, at 600 Arch Street, room 6310, Philadelphia, Pa. 19106.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Mid-Atlantic regional office of the Commission, 2120 L Street NW., room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss current civil rights events in Pennsylvania; review of progress on State Advisory Committee projects; program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28511 Filed 10-6-78; 8:45 am]

[6335-01-M]

REGIONAL ADVISORY COMMITTEES

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a Conference of Colorado, Montana, North Dakota, South Dakota, Wyoming, and Utah Advisory Committees (SAC) of the Commission will convene at 9:30 a.m. and will end at 4:30 p.m. on November 2, 3, 1978, at the Stapleton Plaza, 3333 Quebec, Denver, Colo. 80207.

Persons wishing to attend this conference should contact the Committee chairperson, or the Rocky Mountain regional office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

The purpose of this Conference is that there will be 6 panels of speakers dealing with issues relating to energy resource development and energy pricing as they impact woman and minorities in region VIII.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28512 Filed 10-6-78; 8:45 am]

[6335-01-M]

VERMONT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 9:30 p.m. on October 24, 1978, in the Ramada Inn, Montpelier, Vt.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28513 Filed 10-6-78; 8:45 am]

[6335-01-M]

WASHINGTON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Washington Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 11 a.m. on October 21, 1978, 915 Second Avenue, Suite 2854, Seattle, Wash. 98174.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the northwestern regional office of the Commission, 915 Second Avenue, Room 2852, Seattle, Wash. 98174.

The purpose of this meeting is to discuss program planning for fiscal years 1979, 1980, and 1981.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-28514 Filed 10-6-78; 8:45 am]

[6325-01-M]

CIVIL SERVICE COMMISSION

PRIVACY ACT OF 1974

Adoption of System of Records

AGENCY: U.S. Civil Service Commission.

ACTION: Announcing the adoption of proposed alteration to an existing system of records and the adoption of a proposed new system of records.

SUMMARY: The purpose of this document is to give notice pursuant to 5 U.S.C. 552a(o) of the adoption of the alterations to the Commission's Recruiting, Examining, and Placement Records (CSC/GOVT-5), that were proposed in the FEDERAL REGISTER (43 FR 35739) on August 11, 1978. Contained in that notice was the Commission's proposal of a new system of records, Presidential Management Intern Program Records (CSC-10). This system is now adopted by this notice with the change that it will be identified as CSC-9 rather than CSC-10, due to the cancelling of the former CSC-9 system (see 43 FR 31426).

EFFECTIVE DATE: The changes to CSC/GOVT-5 and the adoption of CSC-9 systems of records are effective October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Andrew W. Boesel, Bureau of Intergovernment Personnnel Programs, 202-254-7316.

SUPPLEMENTARY INFORMATION: Executive Order 12008, dated August 25, 1977, created the Presidential Management Intern Program (PMIP), administered by the Commission. In the preliminary stages of program implementation, it was unclear whether records necessary to this program constituted an entirely new system of records, or should be construed as part of an existing Commission system of records (CSC/GOVT-5). As Program development efforts progressed, it became clear that to insure full public and participant awareness of the Program, these PMIP records should be

published as a separate system of records.

Reports describing the new system were filed concurrently with the publication of the proposed new system with the Congress and OMB. The Commission requested and was granted a waiver of the Office of Management and Budget 60 day advance notice requirement, since to cease continued implementation of the program would adversely affect the public interest. A period for public comment was provided, during which Privacy Act responsibilities for the records were handled under the CSC/GOVT-5 notice. No comments were received during this period. Therefore, effective October 10, 1978 the Commission is adopting, as proposed, the alteration to the CSC/GOVT-5 system of records, the text of which appears in the FEDERAL REGISTER of September 8, 1978 (43 FR 40106), and the new system of records, CSC-9, with the only change being in the identification symbol, the text of which appears in the FEDERAL REGISTER of August 11, 1978 (43 FR 35739).

UNITED STATES CIVIL SERVICE COMMISSION.
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-28598 Filed 10-6-78; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE OF THE AMERICAN MARKETING ASSOCIATION

Public Meeting

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that the Census Advisory Committee of the American Marketing Association will convene on October 31, 1978, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Md.

The Census Advisory Committee of the American Marketing Association was established in 1946 to advise the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the president of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 4 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, major budget program developments, status of current legislative proposals affecting the Bureau, and other topics of current interest; (2) current status of the 1980 census; (3) advertising plans for the 1980 census; (4) Bureau electronic data processing—status, problems, and plans; (5) time series analysis—Census Bureau efforts to improve methodology; (6) a proposal for current estimates for small areas; (7) Committee discussion and recommendations; and (8) date and suggestions for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. Tyler R. Sturdevant, Chief, Business Division, Bureau of the Census, Room 2633, Federal Building 3, Suitland, Md. (Mail address: Washington, D.C. 20233.) Telephone 301-763-7564.

Dated: October 4, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 78-28365 Filed 10-6-78; 8:45 am]

[3510-07-M]

SURVEY OF DISTRIBUTORS' STOCKS OF CANNED FOODS

Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct its annual survey of inventories, covering stocks of 30 canned and bottled products, including vegetables, fruits, juices, and fish, as of December 31, 1978. This survey, which will be conducted under the provisions of Title 13, United States Code, Sections 182, 224, and 225, provides the only continuing source of information on stocks of the specified canned foods held by wholesalers and in warehouses of retail multiunit organizations.

On the basis of information received by the Bureau of the Census, these data will have significant application to the needs of the public, industry, and the distributive trades, as well as governmental agencies. The data are not publicly available from nongovernmental or other governmental sources.

This survey, if conducted, shall begin not earlier than November 9, 1978.

Reports will not be required from all firms, but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods in order to provide yearend inventories of the specified canned food items with measurable reliability. These stocks will be measured in terms of actual cases, with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." (In addition, multiunit firms will be requested to update the list of their establishments maintaining canned food stocks.)

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233. Any suggestions or recommendations concerning the subject matter of this survey will receive consideration if submitted in writing to the Director on or before November 9, 1978.

Dated: October 4, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 78-28364 Filed 10-6-78; 8:45 am]

[1505-01]

Industry and Trade Administration

UNIVERSITY OF ALABAMA, DEPARTMENT OF BIOLOGY, ET AL.

Applications for Duty-Free Entry of Scientific Articles

Correction

In FR Doc. 78-26413, appearing at page 42288 in the issue for Wednesday, September 20, 1978, on page 42288, in the middle column, in Docket No. 78-00381, Mount Holyoke College, in the 6th line, "model FX 900" should be corrected to read "model FX 90Q".

[3710-08-M]

DEPARTMENT OF DEFENSE

Department of the Army

WINTER NAVIGATION BOARD ON GREAT LAKES-ST. LAWRENCE SEAWAY

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Winter Navigation Board to be held on October 26, 1978, at the Host International Hotel at Detroit Metropolitan Airport in Romulus, Mich. The meeting will be in session from 10 a.m. until 3:30 p.m., e.d.s.t.

The Winter Naivgation Board is a multi-agency organization which includes representatives of Federal agencies and non-Federal public and private interests. It was established to direct the Great Lakes-St. Lawrence

Seaway navigation season extension demonstration investigations being conducted pursuant to Pub. L. 91-611, as amended by Pub. L. 93-251, and 94-587.

The primary purpose of the meeting is to discuss the fiscal year 1979 Demonstration Activities and particularly the funding requirements and the St. Lawrence River activities. This includes the status of the Environmental Impact Statement, water levels and flows reconciliation status report, status of permits application, and status of the development of engineering/environmental/operational plan. Other items to be discussed include a summary of the fiscal year 1978 funding allocation and a Status Report on the Draft Feasibility Report.

The meeting will be open to the public, subject to the following limitations:

a. As the seating capacity of the meeting room is limited, it is desired that advance notice of intent to attend be provided. This will assure adequate and appropriate arrangements for all attendants.

b. Written statements, to be made part of the minutes, may be submitted prior to, or up to 10 days following, the meeting, but oral participation by the public is limited because of the time schedule.

Inquiries may be addressed to Mr. David Westheuser, U.S. Army Engineer District, Detroit, Corps of Engineers, P.O. Box 1027, Detroit, Mich. 48231, telephone 313-226-6770.

Dated: October 5, 1978.

By authority of the Secretary of the Army.

ROME D. SMYTH,
Colonel, U.S. Army, Director, Administrative Management, TAGCEN.

[FR Doc. 78-28584 Filed 10-6-78; 8:45 am]

[3810-70-M]

Office of the Secretary of Defense

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-436, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 5, 1978; Tuesday, December 12, 1978; Tuesday, December 19, 1978; and Tuesday, December 26, 1978, at 9:45 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-643, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D281, the Pentagon, Washington, D.C.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-28361 Filed 10-6-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Negative Determination of Environmental Impact if Prohibition Orders Issued to Certain Powerplants Are Made Effective

AGENCY: Department of Energy.

ACTION: Notice of Negative Determination of Environmental Impact and Availability of Environmental Assessments.

SUMMARY: Pursuant to 10 CFR 208.4(c) and 305.9(c), the Department of Energy (DOE) hereby gives notice that, in accordance with 10 CFR 305.9(c) and 208.3(a)(4), it has performed an analysis of the environmental impact of the proposed issuance of notices of effectiveness (NOE's) to the following powerplants:

Docket No.	Owner	Powerplant No.	Generating station	Location
OFU-026	Potomac Electric Power Co.	1	Morgantown	Newburg, Md.
OFU-027	do	2	do	Do.

DOE has determined that making the prohibition orders effective will not have a significant impact on the quality of the human environment. Accordingly, an environmental impact statement need not be prepared.

DATE: Comments by October 31, 1978.

ADDRESS: Written comments to: Office of Public hearing Management, Department of Energy, Box VW, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Steven A. Frank, Division of Coal Utilization, Room 7202, 2000 M Street NW., Washington, D.C. 20461, 202-254-6246.

Robert J. Stern, Division of NEPA Affairs, Room 7119, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9760.

Janine Landow-Esser, Office of the General Counsel, Room 8217, 20 Massachusetts Avenue NW., Washington, D.C. 20461, 202-376-4262.

SUPPLEMENTARY INFORMATION: Prohibition orders which, if made effective, would prohibit the above-named powerplants from burning natural gas or petroleum products as their primary energy source, were issued on June 30, 1975 (40 FR 28430, July 3, 1975) under authority of sec-

tion 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 791 et seq., as amended by Pub. L. 94-163, and as further amended by Pub. L. 95-70. The prohibition orders: *Provided, however,* That in accordance with the requirements of 10 CFR 303.10(b) and 305.7, the orders would not become effective until DOE had considered the environmental impact of making the orders effective pursuant to 10 CFR 305.9 and until DOE had served the affected powerplants with NOE's.

The Economic Regulatory Administration (ERA), Department of Energy has analyzed the potential environmental impacts that would result from the proposed NOE issuance for these powerplants. DOE has determined that the proposed issuance of NOE's for the prohibition orders issued to the above-named powerplants will not constitute "major Federal action[s] significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Therefore, pursuant to 10 CFR 208.4(c), DOE has concluded that an environmental impact statement is not required.

Additional copies of this negative determination of environmental impact and copies of the environmental assessments upon which it is based are available upon request from Mr. Steven A. Frank, at the address indicated above. Copies of the documents are also available for public review in the DOE Freedom of Information Reading Room, Room 2107, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461.

COMMENT PROCEDURE: Interested parties are invited to submit written comments with respect to this negative determination to the Office of Public Hearing Management, Box VW, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Ten copies should be submitted. All comments should be received by DOE no later than October 31, 1978 in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in accordance with the procedures set forth at 10 CFR 205.9(f). Any material not filed in accordance with such section will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., September 29, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation Economic Regulatory Administration.

[FR Doc. 78-28344 Filed 10-6-78; 8:45 am]

[3128-01-M]

Energy Information Administration

ENERGY EMERGENCY MANAGEMENT INFORMATION SYSTEM

Development Plan, Public Hearings on Plan, and Opportunity for Written Comment

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of (i) the development of the program plan for the energy emergency management information system (EEMIS), (ii) public hearings on the plan, and (iii) opportunity for written comment.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) announces a program plan for development of the EEMIS, and solicits public comment. Written comments will be accepted through November 30, 1978. Hearings will be held during November 14-16 in Atlanta, Boston, Chicago, Denver and Washington, D.C. The proposed system is briefly described in the Supplementary Information section of this notice. Copies of the EEMIS program plan in its entirety are available at the Energy Information Administration Clearinghouse, room 200, 1726 M Street NW., Washington, D.C., and at all DOE Regional Offices.

DATES: Written comments by November 30, 1978; requests to speak by October 31, 1978; 100 copies of oral statements should be brought to room 2313, 2000 M Street NW., Washington, D.C., by November 15, 1978, for the hearing in Washington, D.C.; copies of oral statements for the hearings in Atlanta, Ga.; Boston, Mass.; Chicago, Ill.; and Denver, Colo. should be brought to the hearing site on the day of the hearing.

HEARING DATES: Washington, D.C. hearing: November 16, 1978; Atlanta, Ga. hearing: November 14, 1978; Boston, Mass. hearing: November 14, 1978; Chicago, Ill. hearing: November 15, 1978; Denver, Colo. hearing: November 15, 1978.

ADDRESSES: All comments to: Public Hearing Management, Box VM, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461; a separate copy of written comments may be sent to: Barry Yaffe, Director, Energy Emergency Management Information System, Energy Information Administration, Department of Energy, Room 820, 1726 M Street NW., Washington, D.C. 20461. Copies of the EEMIS program plan are available at the following DOE regional offices: Region I, 150 Causeway Street, Boston, Mass. 02114; Region II, 26 Federal Plaza, New York, N.Y. 10007; Region III, 1421 Cherry Street, Philadelphia, Pa. 19102; Region IV, 1655 Peachtree Street NE., Atlanta, Ga. 30309; Region V, 175 West Jackson Boulevard, Chicago, Ill. 60604; Region VI, 2626 Mockingbird Lane, Dallas, Tex. 75235; Region VII, 324 East 11th Street, Kansas City, Mo. 64106; Region VIII, 1075 South Yukon Street, Lakewood, Colo. 80226; Region IX, 111 Pine Street, San Francisco, Calif. 94111; Region X, 1992 Federal Office Building, 915 Second Avenue, Seattle, Wash. 98174.

REQUESTS TO SPEAK: Washington hearing: attention: Public Hearing Management, Room 2313, Department of Energy, Box VM, 2000 M Street NW., Washington, D.C. 20461; Atlanta hearing: Department of Energy, attention: Sylvia Orr, 1655 Peachtree Street, Atlanta, Ga. 30309; Boston hearing: Department of Energy, attention: Kathy Healy, 150 Causeway Street, Room 700, Boston, Mass. 02114; Chicago hearing: Department of Energy, attention: Charles Swank, 175 West Jackson Boulevard, Chicago, Ill. 60604; Denver hearing: Department of Energy, attention: Robert Drawe, P.O. Box 26247-Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226.

HEARING LOCATIONS: Washington, D.C.: Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C.; Atlanta, Ga.: Atlanta Civic Center, Room 201, 395 Piedmont Avenue NE., Atlanta, Ga. 30308; Boston, Mass., J. F. K. Government Center, room 1900A, Boston, Mass. 02203; Chicago, Ill.: Everett McKinley Dirksen Building, room 204A, 219 South Dearborne Street, Chicago, Ill.; Denver, Colo.: Room 269, Main Post Office, 19th and South Streets, Denver, Colo.

FOR FURTHER INFORMATION CONTACT:

Barry Yaffe (Energy Emergency Management Information System Project Office), .Department of Energy, 1726 M Street NW., Room 820, Washington, D.C. 20461, 202-634-2079.

Yvonne Allen (Energy Emergency Center), Department of Energy, 2000 M Street NW., Room 7204, Washington, D.C. 20461, 202-252-5155.

Robert Gillette (Office of Public Hearing Management), Department of Energy, 2000 M Street NW., Room 2313, Washington, D.C. 20461, 202-254-5201.

William Luck (Office of General Counsel), Department of Energy, Federal Building, 12th and Pennsylvania Avenue, Room 6144, Washington, D.C. 20461, 202-566-9296.

SUPPLEMENTARY INFORMATION:

I. Legislative authority for energy emergency management information system.
II. Objectives of energy emergency management information system.
III. Historical development of energy emergency management information system.
IV. Implementation program.
V. Specific requests for comments.
VI. Hearing and written comment procedures.

I. Legislative Authority

Legislative authority for the development of EEMIS is provided for in section 102 of the Department of Energy Organization Act (Pub. L. 95-91), which provides in relevant part as follows:

> The Congress therefore declares that * * * it is the purpose of this Act— * * * (8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply * * *.

The Federal Energy Administration Act of 1974 (FEA Act) Pub. L. 93-275, as amended, states the (Secretary) shall—

> Section 5(b)(4) "develop plans and programs for dealing with energy production shortages;"
> Section 5(b)(9) "collect, evaluate, assemble, and analyze energy information on reserves, production, demands, and related economic data;".

II. Objectives of the Energy Emergency Management Information System

Within the DOE there are a number of individual information gathering instruments, each aimed at supporting specific, separate objectives. However, the use of multiple systems, varying data element definitions and reporting bases, and a wide variety of specialized software structures, has proven inefficient and inadequate to meet the requirements of policymakers and program managers in times of energy emergency. The EEMIS will entail a comprehensive program including more effective regional and State reporting and analysis capability, over a period of three years.

The basic objective of EEMIS is to assemble and provide rapid access to information that is used in the management of energy emergencies, including the capability to monitor and forecast supply/demand conditions and to assess the probable impact of alternative emergency response measures.

To be of greatest value to users, EEMIS should have the capability to provide extensive information exchange services. These services should include both structural Automated Data Processing systems and communications systems for general energy emergency information dissemination.

At a minimum, Federal and State government units will be offered "primary user" status, which would allow them to insert and extract information as needed. Selected data access may be offered to others. It is intended that arrangements permitting data-sharing with other Federal agencies and the States will be worked out early in EEMIS development, so that energy emergency information can be made available rapidly to those needing it to carry out emergency programs.

III. Historical Development of the Energy Emergency Management Information System

The development of an emergency-oriented information system is a basic component of DOE's overall program of improving its ability to deal with energy emergencies. The program began in the fall, 1977, with the issuance of the Energy Emergency Planning Guide: Winter 1977-78. In June, 1978, the EIA established the EEMIS Project Office to focus its energy emergency information activities and to oversee development of EEMIS. The draft EEMIS program plan is the first product of the EEMIS Project Office.

IV. Implementation Program

The EIA plans to implement the EEMIS incrementally over the next 3 years. During the 1978 winter, existing capabilities will be used, including current data collection mechanisms and communications. A detailed design analysis of the final 1981 system will be undertaken during fiscal year 1979. At the same time, interim improvements will be undertaken in 1979 to make the current systems more useful in an emergency. The interim improvements include combining existing data in an EEMIS-specific file; setting up an emergency actions file; development of preliminary monthly supply/demand forecasts; agreements for data sharing arrangements with the States; installation of computer terminals on a pilot basis in a selected number of States; introduction of special communication networks and linkages; agreements with other agencies to collaborate on procedures to assess weather and economic impacts in an emergency; and conversion of emergency background information (e.g., contingency plans, distribution system maps, etc.) to computer retrievable microfilm.

V. Specific Requests for Comment

Comments are invited on all aspects of the EEMIS Plan. In addition, however, the EIA requests that commenters direct particular attention to the following:

(1) *Scope of Users.* There will be three classes of users—primary, having full access to information and input privileges; secondary, having full access to information but no input privileges; and courtesy, having limited access and no input privileges. In addition to those offices within the DOE having direct responsibility for emergency actions, primary users will include the following State offices: Office of the Governor, State Energy Office (or equivalent), State Regulatory Office (e.g., Public Utilities Commission) or Emergency Services Office. Secondary users will include the DOE Office of Intergovernmental and Institutional Relations and the DOE Office of the Controller and may include other Federal departments such as the Department of Transportation and the Department of Defense. Outside of the Federal establishment, secondary users may include the State DOT's and the city manager or chief executive of cities or counties. Other interested parties may be given access as courtesy users.

(2) *Data sharing with States.* EEMIS will contain data submitted to the DOE that could be valuable to States in times of energy emergency. DOE intends to enter into sharing arrangements with State agencies with proper data access safeguards specified. The extent to which such information will be made available to non-DOE users is a key item of consideration in EEMIS development.

(3) *Emergency information collection and forecasting activities.* Suggestions are solicited, particularly from members of the energy industry, on those minimum key data elements deemed necessary to assess the magnitude of an energy emergency and to determine appropriate action. Comments are also sought on methods to reduce reporting burden and to facilitate the rapid collection, verification and analysis efforts required in times of emergency.

VI. Hearings and Written Comment Procedures

A. Written Comments

You are invited to participate in this public hearing by submitting data, views, or arguments with respect to EEMIS. Comments should be submitted by 4:30 p.m. on November 30, 1978, to the address indicated in the ADDRESS section of this notice and should be identified on the outside envelope and on documents submitted with the designation "DOE, EEMIS."

Fifteen copies should be submitted. All comments that are received will be available for public inspection in the DOE Reading Room, room 2107, Federal Building, 12th and Pennsylvania Avenue NW., between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

Commenters should identify separately any information or data considered to be confidential and submit it in writing, one copy only. EIA reserves the right to determine the confidential status of the information or data submitted and to treat it accordingly.

B. PUBLIC HEARINGS

1. *Request procedure.* The time and place for the public hearings are indicated in the DATES and ADDRESSES sections of this notice. If necessary to present all testimony, the hearings will be continued at 9:30 a.m. of the next business day following the day of the hearing.

Those wishing to make an oral presentation must submit a written request to the addresses given in REQUESTS TO SPEAK section of this notice. The request should contain a phone number where you may be contacted through the day before the hearing. Since it may be necessary to limit the number of persons making such presentations, you should be prepared to describe your interest in this proceeding, and why you are a proper representative of a group or class of persons that has such an interest, and to give a concise summary of your proposed oral presentation.

EIA will notify each person selected to be heard before 4:30 p.m., November 3, 1978.

2. *Conduct of the hearings.* EIA reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. The hearing will not be judicial or evidentiary in nature. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions before 4:30 p.m., November 8, 1978, to be asked of any person making a statement at the hearing (to the address indicated above). Any person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officers. The DOE or the presiding officers, if the question is submitted at the hearing, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any futher procedural rules needed for the proper conduct of the hearing will be announced by the presiding officers.

A transcript of the hearing will be made and EIA will retain the entire record of the hearings, including the transcript; these records will be made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:30 a.m. and 5 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

In the event that it becomes necessary for the DOE to cancel the hearing, every effort will be made to publish advance notice in the FEDERAL REGISTER of such cancellation. Moreover, DOE will notify all persons scheduled to testify at the hearing. However, it is not possible for DOE to give actual notice of cancellations or changes to persons not identified to DOE as participants. Accordingly, persons desiring to attend a hearing are advised to contact DOE on the last working day preceding the date of the hearing to confirm that the hearing will be held as scheduled.

Issued at Washington, D.C., on September 29, 1978.

LINCOLN E. MOSES,
Administrator, Energy Information Administration.

[FR Doc. 78-28345 Filed 10-6-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. ER78-494]

PENNSYLVANIA ELECTRIC CO.

Order Accepting Rates for Filing, Suspending Proposed Rate Increase, Allowing Interventions, Denying Motion and Establishing Procedures

SEPTEMBER 29, 1978.

On July 18, 1978, Pennsylvania Electric Co. (Penelec) submitted for filing revised rates applicable to 1 partial and 11 full requirement customers.[1] The filing was declared deficient in a letter dated August 14, 1978, and was completed on September 1, 1978. The proposed rate revision would increase revenues by approximately $7,587,000 based on the 12-month test period ending June 30, 1979. This would constitute approximately a 27 percent increase of the rates currently in effect.

The original July 18th submittal requested an effective date of August 16, 1978. The September 1st transmittal letter accompanying the curing documents indicated that Penelec continues to propose an August 16th effective date. In neither case would the date proposed satisfy the Commission's 30 day notice requirement; in neither case did Penelec request a waiver of 18 CFR 35.3 notice requirements. However, considering the intention evidenced in the September 1st letter, the Commission will view the submittal as containing an implicit request for waiver of the notice requirements. Notice of the filing was issued on July 26, 1978, with protests or petitions to intervene due on or before August 4, 1978.

On August 4, 1978, Allegheny Electric Cooperative, Inc., Borough of Berlin and Borough of Smethport (Petitioners) tendered for filing a Protest and Petition to Intervene. In support of their petition, Petitioners state that they are customers of Penelec and that their interests will be directly affected by the instant filing and can not be represented adequately by existing parties.

Petitioners contend that the proposed rates are unjust, unreasonable and unduly discriminatory, and that the filing should be rejected. They allege error in Penelec's cost-of-service calculations, asserting in particular that Penelec has functionalized general plant contrary to "appropriate ratemaking practices and Commission precedent" by applying gross plant ratios; that Commission precedent requires the use of labor ratios; and that Penelec's filing should be revised accordingly.

On August 8, 1978, Penelec submitted an Answer to Petition to Intervene and Motion to Reject and Suspend. Penelec argues that the cost of service is not excessive and that the motion to reject should be denied. In particular, Penelec asserts that the proper method for functionalizing general plant is an open question and that the Commission has approved both plant ratios and wage ratios.

In *Minnesota Power & Light Company*, Opinion No. 20, issued August 3, 1978, in Docket Nos. E-9499 *et al.*, we held that "General Plant as covered by Accounts 389-399 in the Commission's Uniform System of Accounts for Public Utilities and Licenses, should be properly allocated on the basis of labor costs", and that "the company's plant allocation method is not reasonable." We also "requir[ed] that labor ratios be used in allocating general plant * * * in succedding cases", *supra*

[1] See Attachment A.

at 16-17. In a subsequent order[2], we indicated that the use of labor ratios in functionalizing general plant was a "general rule" and held that the burden on the applicant was "to show that the labor ratios are unreasonable as applied to the company, not merely that its alternative method might be reasonable". Penelec—like all other future applicants—bears this same burden in the instant case.

Our review indicates that the rates filed by Penelec have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. In light of this review and (1) the fact that both the Petitioners' motion and Penelec's answer were filed prior to Staff's finding of deficiency and the subsequent submission of curing documents and (2) the determination that Petitioners' allegations present questions of law and fact more appropriately considered at hearing, the Commission will deny the petitioners' motion to reject the filing, accept the submittal for filing and suspend the proposed rates for 2 months. Accordinly, the rates will go into effect as of December 1, 1978, subject to refund.

The Commission finds that participation in this proceeding by the petitioners may be in the public interest.

The Commission orders: (A) The rates proposed by Pennsylvania Electric Co. are hereby accepted for filing and suspended for 2 months, to become effective as of December 1, 1978, subject to refund.

(B) Pennsylvania Electric Co. is hereby directed to file within 30 days of the issuance of this order a schedule of adjustments to its filed cost of service study, such adjustments being designed to show in detail the effects of utilizing labor ratios to functionalize general plant in the determination of the allocated wholesale costs of service.

(C) Waiver of the Commission's notice requirements is hereby denied.

(D) The Petitioners, Allegheny Electric Cooperative, Inc., Borough of Berlin and Borough of Smethport are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* That participation by such intervenors shall be limited to matters set forth in their petition to intervene; *Provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

[2]Order Accepting Rates For Filing, Rejecting Rate For Filing, Waiving Notice, Suspending Rate Increases, Grant Summary Disposition and Granting Interventions", issued on August 25, 1978, in Docket No. ER78-513, Public Service Co. of Indiana.

(E) Petitioners' motion for rejection of the filing is hereby denied.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(A) of the DOE Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by the Pennsylvania Electric Co. in this proceeding.

(G) The Staff shall prepare and serve top sheets on all parties on or before January 30, 1978.

(H) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (*see,* Delegation of Authority, 18 CFR 3.6(d)) shall convene a conference in this proceeding to be held within ten (10) days after the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Law Judge is authorized to establish all procedural dates and to rule upon all motions (except motions to consolidate and sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

ATTACHMENT A

PENNSYLVANIA ELECTRIC COMPANY DOCKET NO. ER78-494

Designation and Description

(1) Third Revised Sheet No. 2 and 4th Revised Sheet Nos. 13 and 14 under FPC Electric Tariff, Orig. Vol. No. 1 (Supersedes 2d Revised Sheet No. 2 and 3d Revised Sheet Nos. 13 and 14)—Table of Contents and Revised Rate—RP.

(2) Supplement No. 14 to Rate Schedule FPC No. 70 (Supersedes Supplement No. 10)—Exhibit B—Rate for Supplemental Power and Energy.

(3) Supplement No. 15 to Rate Schedule FPC No. 70 (Supersedes Supplement No. 11)—Exhibit C—Rate For Wheeling.

Customers

Allegheny Electric Cooperative, Inc. (partial requirements).
Berlin Borough.
East Conemaugh Borough.
Elkland Electric Company.
Girard Borough.
Hooversville Borough.
Rockingham Light, Heat & Power Co.
Smethport Borough.
Summerhill Borough.
West Penn Power Co.
Winber Electric Corp.
Wellsborough Electric Co.

[FR Doc. 78-28532 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Docket No. G-14562, et al.]

TENNESSEE GAS PIPEINE CO., ET AL.

Settlement Proposal

SEPTEMBER 29, 1978.

In the matter of Tennessee Gas Pipeline Co. (Successor to Tennessee Gas Transmission Co.) (Docket No. G-14562); Continental Oil Co. (G-13680); Mobil Oil Corp. (Successor to Magnolia Petroleum Co.) (G-13827); Newmont Oil Co. (G-13948); Continental Oil Co. (G-19855); Atlantic Richfield Co. (Successor to Atlantic Refining Co. (G-19580); Cities Service Co. (Successor to Cities Service Oil Co.) (G-19851); Getty Oil Co. (Successor to Tidewater Oil Co.) (G-19900).

Take notice that on August 8, 1978, the above-captioned parties filed a Settlement Proposal in these proceedings.* The substance of the proposal is as follows:

"Whereas Continental Oil Co. (Continental), Atlantic Richfield Co. (Atlantic Richfield), Cities Service Co. (Cities), Getty Oil Co. (Getty), Mobil Oil Corp. (Mobil), Newmont Oil Co. (Newmont), referred to collectively as Producers, sell natural gas to Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. (Tennessee), * * * pursuant to certificates of public convenience and necessity issued in Docket Nos. G-13680, G-13827, G-13948, G-19855, G-19580, G-19851, and G-19900, * * * and

"Whereas pursuant to the Orders of the Commission in the certificates issued to Producers in the respective docket numbers, a certain portion of the total initial price for sales under each docket was paid into an escrow account by the pipeline purchaser pending determination of the boundary between the Louisiana taxing jurisdiction and the Federal Domain and pending a final order of the Commission in Docket No. AR69-1; and

"Whereas the Supplemental Decree of the United States Supreme Court issued on December 20, 1971, in *United States of America* v. *The State of Louisiana, et al.,* 404 U.S. 386, 30 L. ed. 2d 525, 92 S. Ct. 544, has determined the title dispute as to that portion of the Continental Shelf from which the sales pursuant to Docket Nos. G-13680, G-13827, G-13948, G-19855, G-

*These proceedings were commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), they were 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.

19580, G-19851, and G-19900 are made; and

"Whereas Opinion Nos. 598 and 598-A issued July 16, 1971, and September 9, 1971, respectively, in Docket Nos. AR61-2, *et al.*, and Docket Nos. AR69-1 have been judicially affirmed by the United States Supreme Court in *Mobil Oil Corp.* v. *F.P.C.*, 417 U.S. 283, 41 L. ed. 2d 72, 94 S. Ct. 2328 on June 10, 1974; and

"Whereas Producers desire that such escrowed funds, including any interest accrued thereon, be utilized by the Producers for use in increasing natural gas supplies to be sold to Tennessee. [For more details on these proceedings see FPC *Notice of Proceeding for Disbursement of Escrowed Funds*, issued March 4, 1977 (43 FR 3744, Jan. 27, 1978).]

"Now, therefore, Continental, Atlantic Richfield, Cities, Getty, Mobil, and Newmont and Tennessee agree as follows:

"A. At any time within a 2-year period commencing on the date that Commission approval of this Settlement Proposal is no longer subject to judicial review, each of the Producers may request from Tennessee the total escrowed funds, together with any interest accrued thereon to the date of distribution, attributable to such requesting producers as set out * * *:

Escrow Account for CAGC-TGPL—$793,826.84 [as of June 30, 1978] [Footnote omitted.]

	Docket No.	Percent	
Continental Oil Co.	G-19855	25	$198,456.71
Atlantic Richfield Co.	G-19580	25	198,456.71
Cities Service Oil Co.	G-19851	25	198,456.71
Getty Oil Co	G-19900	25	198,456.71
Total			793,826.84

Escrow Account for MCN-TGPL—$1,233,997.00 [as of June 30, 1978] [Footnote omitted.]

	Docket No.	Percent	
Mobil Oil Corp	G-13827	50	$616,998.50
Continental Oil Co.	G-13680	37½	462,748.87
Newmont Oil Co.	G-13948	12½	154,249.63
Total			1,233,997.00

* * * * *

"C. The escrowed funds received by a Producer shall be utilized by such Producer in undertaking one of the respective projects set forth * * * [below] or projects later (but before the second anniversary date of the Commission's order approving this settlement) proposed and approved by the Producers and Tennessee (hereinafter referred to as 'Project Expenditure') in an attempt to increase the gas supplies which each Producer will sell to Tennessee. [Footnote omitted.] If for whatever reason, one Project Expenditure does not deplete a Producer's portion of the escrow funds, then such Producer may propose additional Project Expenditures.

[Project 1] "Project for Expenditures for

Continental Oil Co.—No. G-19855 and G-13680.
Atlantic Richfield Co.—No. G-19580.
Cities Service Oil Co.—No. G-19851.
Getty Oil Co.—No. G-19900.

"A well is proposed for East Cameron Block 47, offshore Louisiana to a total depth of 13,000'. The target sands are the "P" series at about 11,000' to 13,000' total depth. This depth of producing sand is not now committed to Tennessee Gas Pipeline.

"The total cost of the well, which includes casing for completion but does not include producing or completion costs, is estimated to be $4,986,000.

"The estimated recoverable potential gas reserves are: Development: 16,000 MMCF. Exploratory: 200,000 MMCF.

"Each of the above named companies owns a 25 percent working interest.

"Continental will combine its share of escrow funds under each docket shown.

[Project 2] "Project for Expenditure under (MCN) [Footnote omitted.]

Mobil Oil Corp.—No. G-13827.

"A well will be drilled in East Cameron Block 81, offshore Louisiana on acreage which is owned 100 percent by Mobil and on that portion of Block 81 which is comnmitted to NI-Gas Supply by an existing gas contract; however, through transportation agreements and as a result of Opinion Nos. 743 and 743-A, and the Federal Energy Regulatory Commission's policy statement in Opinion No. 789-A, Tennessee presently has the right to 56.67 percent of the gas produced from such Block 81 subject to the existing gas sales contract."The total cost of the well is estimated to be $3,200,000.

"The estimated recoverable potential gas reserves are: Development: 0 MMCF. Exploratory: 15,700 MMCF.

"D. Up to the total escrowed funds paid to each producer as provided * * * above, two-fifths ($0.40) of each dollar spent by each Producer with respect to a Project Expenditure shall be credited against the escrowed funds paid to such Producer; with the result that three-fifths ($0.60) of each dollar spent by such Producer with respect to a Project Expenditure shall be such Producer's own money.

* * * * *

"F. Newmont states that it does not at this time have a viable project such as described herein for the other Producers. However, Newmont believes that it will within two (2) years have such a project and commits itself * * * to advise the Commission and parties of its project and expenditures.

"G. If, at the expiration of the 2-year period provided for in Paragraph A above, there remains any of the escrowed funds which have not been spent on a Project Expenditure by a Producer, such Producer shall pay to Tennessee such remaining escrowed funds held by it, plus interest at the rate of seven percent (7 percent) per annum accrued from the date such escrowed funds were paid to such producer. All such funds paid to Tennessee pursuant to this paragraph and all funds remaining in possession of the Escrow Agent, shall be flowed through by Tennessee to their customers.

"H. Production of natural gas from gas wells developed pursuant to these projects set forth . . . [herein] will be sold to Tennessee at the applicable nationwide rate or ceiling rate established by legislation. * * * No such production will be sold pursuant to emergency, limited term or any other special pricing procedures.

* * * * *

"J. If any expenditure hereunder results in the completion of a commercial oil well, then no part of that expenditure shall be credited against the Project Expenditure. * * *"

Comments to the Settlement Porposal may be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before October 20, 1978. Such comments will be considered by the Commission in determining appropriate action, but will not serve to make commenters parties to the proceeding.

The record in this proceeding, including the Settlement Proposal, is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-28533 Filed 10-6-78; 8:45 am]

6740-02-M]

[Docket No. RP78-87]

TEXAS EASTERN TRANSMISSION CORP.

Order Accepting for Filing and Suspending Proposed Rate Increase; Subject to Conditions; Granting Interventions; Initiating Hearing; Establishing Procedures; and Summarily Disposing of Costs Items

SEPTEMBER 29, 1978.

On August 31, 1978, Texas Eastern Transmission Corp. (Texas Eastern) filed revised tariff sheets,[1] listed in Appendix A of this order, to become effective October 1, 1978, which would increase annual revenues by $94.2 million. Of this increase, $38.5 million is attributable to costs of purchased gas and advance payments. The remaining $55.7 million increase is based on claimed need to recover higher rate of return, operating costs, taxes and other items of costs. The test period cost of service in support of the proposed rates is based on actual costs for 12 months ending May 31, 1978, as adjusted for changes in costs occuring during the base period and 4 month adjustment period ending September 30, 1978.

Public notice of the filing was issued on September 7, 1978, providing for filing of protests and interventions by September 21, 1978. The petitioners to intervene are listed in Appendix B to this order. All have demonstrated an interest in this proceeding which warrants their participation, and intervention by them shall be permitted.

Texas Eastern contends that this filing meets the requirements of both a filing under 18 CFR 154.38(d)(4)(vi)(a) and a change in rates under 18 CFR 154.63. The Company requests waiver of all Commission Rules and Regulations necessary to permit this filing, or any substitute filing, to be made effective on October 1, 1978.

The Company proposes, inter alia, an overall rate of return of 10.75 percent, including 13.085 percent on equity with a capitalization ratio of 51.50 percent common equity. It seeks a change in the General Terms and conditions of its Tariff to reflect a change in the standard unit of measure from a saturated, or wet, basis to a dry basis. Texas Eastern has also included under research and development expenses the costs of certain unsuccessful supplemental gas supply projects which were disallowed in a prior Commission rate-filing.[2]

The Commission finds that the present filing does not comply with 18 CFR 154.38(d)(4)(vi)(a), for Texas Eastern has adjusted its test period costs for known and measurable changes occuring during the 4 months following the base period as well as seeks to increase its allowed rate of return and associated Taxes. This section does not allow post test period asjustments, abut rather, provides for annualization of changes which actually occurred during the 12 month test period. This filing has all the ingredients of a rate increase filing under 18 CFR 154.63, in which Texas Eastern simply elected to make adjustments for a 4 month period instead of the 9 month period allowed by the Regulations. Accordingly, the filing is accepted as a section 4(e) rate increase application filed pursuant to 18 CFR 154.63.

Based on a review of Texas Eastern's filing, the Commission finds that the proposed rate increase and tariff modifications have not been shown to be just and reasonable and may be unjust, unreasonable and unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Texas Eastern's revised tariff sheets for filing, suspend their effectiveness for 5 months until March 1, 1978, subject to refund and the conditions stated below, and set the matter for hearing.

To continue to use its Purchased Gas Adjustment clause (PGA) Texas Eastern must comply with the requirements of 18 CFR 154.38(d)(4)(vi)(a) and restate its base tariff rates to include the current cost of purchased gas, supported by a cost and revenue study meeting the requirements of that section and justifying the restated rates. Texas Eastern shall file such a restatement to establish its base tariff rate, which will be effective on October 1, 1978, subject to refund. Texas Eastern may use the actual costs shown for the base period in this docket i.e.; the 12 months ended May 31, 1978, as annualized in accordance with Section 154.38(d)(4)(vi)(a) of the Commission's Regulations, to support the restated base tariff rates.

Texas Eastern's cost of service includes certain facilities which have not been certificated and placed in service by the end of the test period. Test period adjustments for new facilities may be made only for those facilities that have been certificated by the filing date and placed in service by the end of the test period. 18 CFR 154.63(e)(2)(ii). The Commission shall grant waiver of this regulation and accept Texas Eastern's filing as tendered, upon condition that by 30 days prior to March 1, 1979, the Company file revised tariff sheets reflecting elimination of all facilities not in service by the end of the test period. The Company shall also adjust its rates to reflect the actual balances of advance payments in Account 166 at the end of the test period, provided that the inclusion of a higher advance payments balance shall not be permitted to increase the level of the original suspended rates. This waiver is granted upon condition that Texas Eastern shall not be permitted to make offsetting adjustments other than those made pursuant to Commission approved tracking provision, those adjustments required by this order, and those required by other Commission orders.

Finally, turning to the cost of certain projects which Texas Eastern once again is attempting to include as a research and development expense, despite specific disallowance in a prior rate determination, the Commission summarily rejects these items of costs. The Commission's authority to summarily dispose of issues without hearing has long been settled.[3] Summary disposition of an issue is appropriate where there are no material facts in dispute, where the dispositive Commission policy is firmly established and there is no need to probe further for underlying facts to support the specific application of that policy.[4] The Commission, and its predecessor, the FPC, has disposed of issues summarily where, as is the case here, portions of succeeding rate cases duplicate issues raised and resolved in the prior proceeding.[5]

Texas Eastern has included, inter alia costs for four projects in its Account No. 188 and in its rates for which rate treatment was denied by the FPC in Docket No. RP75-73.[6] Summary disposition to disallow these cost items from Texas Eastern's cost of service is appropriate for the same reasons they were disallowed by the FPC in the prior proceeding. No changed circumstances have intervened to warrant altering that prior determination.

These subject projects consist of unsuccessful efforts to develop supplemental gas supplies and were designed to employ existing technology. The first disallowed project relates to the production of synthetic natural gas from crude oil. The second involves production of substitute natural gas from liquid hydrocarbons (Naptha). Costs were incurred with respect to both projects to determine the technical feasibility of using such gas to, select the process technology of gasification of either the crude oil or

[1] FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2.

[2] Texas Eastern Transmission Corp., Docket No. RP75-73, Order Modifying and Accepting Settlement, June 6, 1977, at 14 and 15.

[3] *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Pennsylvania Gas and Water Company* v. *F.P.C.*, 463 F.2d 1242 (D.C. Cir. 1972).

[4] *United Gas Pipe Line Co.* v. *F.P.C.*, 551 F.2d 460 (D.C. Cir. 1977).

[5] *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F.2d 606 (3rd Cir. 1956).

[6] *Texas Eastern Transmission Corporation, supra.*

naptha, to arrive at a realistic cost estimate for the projects, and to determine the feasibility of the project on a cost basis. The third disallowed project is an investigation in regard to production of gas from coal. Expenditures were made on the third project to determine the feasibility of developing a low cost process to convert coal to pipeline quality gas, establish the practical operating features of the process and rates of the various chemical reactions and the extent to which they would proceed, develop a preliminary plant design, and determine the investment cost and cost of service for the process. Texas Eastern terminated these projects because lower cost alternatives were developed. All three were cost feasibility studies, rather than experimental research. The fourth project, a natural gas transmission system from the Canadian Arctic Islands to the U.S. Border, was disallowed because Texas Eastern could not show any benefits accruing to the U.S. consumer through this project. Rather, it appeared that much of the gas transported through this system would benefit Canadian consumers. Because these four projects were not experimental in nature, the FPC found that, they did not qualify as research and development expenses under definitions 28(b), as it then existed, of the Uniform System of Accounts, 18 CFR, Part 201.[7] It was undisputed in the prior proceeding that these activities did not then fall within the definition of allowable research and development costs. This Commission concurs with the FPC's finding that these expenses do not meet the Order No. 483's definition of R. & D. This Commission further concurs with the FPC's determination that no other basis exists to justify including these costs in rate base, for the risks of these efforts should properly be born by shareholders and not ratepayers, as the projects are not used or useful to Texas Eastern's customers.

Accordingly, the Commission finds it is necessary and proper in carrying out the provisions of the Natural Gas Act that the Comission enter upon a hearing concerning the lawfulness of the rates, terms and conditions proposed by Texas Eastern, and that the proposed tariff changes be accepted for filing and suspended as ordered below.

The Commission orders: (A) Subject to the conditions of Ordering Paragraphs (B), (C), and (D) below, Texas Eastern's proposed Revised tariff sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2 are accepted for filing, suspended for five months until March 1, 1978, subject to refund.

(B) Waiver of the requirements of 18 CFR 154.63 shall be granted to allow Texas Eastern to file substitute revised tariff sheets by 30 days prior to March 1, 1978, to conform to the cost allocation, cost classification and rate design methodology prescribed in Opinion 21.

(C) Texas Eastern shall file within 15 days of the issuance of this order a restatement of its base tariff rates to include the current cost of purchased gas. The base tariff rates will be effective October 1, 1978, subject to refund. Texas Eastern shall also file a supporting cost and revenue study as required by 18 CFR 154.38(d)(4)(vi)(a). Texas Eastern may use the actual costs shown for the base period in this docket i.e.; the 12 months ended May 31, 1978, as annualized in accordance with § 154.38(d)(4)(vi)(a) of the Commission's Regulations to support the such restated base tariff rate rates.

(D) Texas Eastern shall, within 30 days prior to March 1, 1978, file revised tariff sheets to reflect:

1. removal of costs associated with facilities not certificated and in service as of February 28, 1978, provided that Texas Eastern shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders,

2. Adjustment of the estimated balance of advance payments in Account 166 to the actual balance at the end of the test period, provided that the inclusion of a higher advance payment balance shall not be permitted to increase the level of the original suspended rates,

3. Removal of the costs associated with the four projects for supplemental gas supplies identifiable with projects disallowed in Texas Eastern's prior RP75-73 rate determination.

4. The changes discussed in Ordering paragraph B above.

(E) The petitioners to intervene listed in Appendix B to this order shall be permitted to intervene in this proceeding subject to the Commission's rules and regulations; *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(F) Staff shall serve its top sheets on or before January 15, 1978.

(G) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate or dismiss) as provided for in the rules of practice and procedure.

(H) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

APPENDIX A—Texas Eastern Transmission Corp., Docket No. RP78-87

REVISED TARIFF SHEETS

Fourth revised volume No. 1

Forty-Fourth Revised Sheet No. 14.
Forty-Fourth Revised Sheet No. 14A.
Forty-Fourth Revised Sheet No. 14B.
Forty-Fourth Revised Sheet No. 14C.
Forty-Fourth Revised Sheet No. 14D.
First Revised Sheet No. 28.
First Revised Sheet No. 29.
First Revised Sheet No. 77.
First Revised Sheet No. 78.
First Revised Sheet No. 79.
First Revised Sheet No. 80.
First Revised Sheet No. 81.
First Revised Sheet No. 96A.
Fourth Revised Sheet No. 97.
Fourth Revised Sheet No. 98.
Second Revised Sheet No. 99.
Third Revised Sheet No. 100.
Fourth Revised Sheet No. 101.
Second Revised Sheet No. 101A.
Third Revised Sheet No. 101B.
Second Revised Sheet No. 101C.
Second Revised Sheet No. 101D.
First Revised Sheet No. 101E.
Second Revised Sheet No. 112.
First Revised Sheet No. 173.
Second Revised Sheet No. 174.
Second Revised Sheet No. 175.
Second Revised Sheet No. 176.
Second Revised Sheet No. 177.
First Revised Sheet No. 178.
First Revised Sheet No. 179.
First Revised Sheet No. 180.
Second Revised Sheet No. 181.
Third Revised Sheet No. 182.
First Revised Sheet No. 183.
Third Revised Sheet No. 184.
First Revised Sheet No. 185.
First Revised Sheet No. 186.
Second Revised Sheet No. 187.
Second Revised Sheet No. 188.

Original volume No. 2

First Revised Sheet No. 230.
Second Revised Sheet No. 231.
Tenth Revised Sheet No. 232.
First Revised Sheet No. 233.
First Revised Sheet No. 234.
Twelfth Revised Sheet No. 235.
First Revised Sheet No. 236.
Second Revised Sheet No. 237.
First Revised Sheet No. 238.

[7] These regulations were promulgated by FPC Order No. 483, issued April 30, 1973. These regulations were modified on a prospective basis by FPC order No. 566 issued June 3, 1977 in Docket No. RM76-17.

First Revised Sheet No. 239.
First Revised Sheet No. 240.
Eighth Revised Sheet No. 241.
First Revised Sheet No. 242.
First Revised Sheet No. 243.
First Revised Sheet No. 244.
Original Sheet No. 244A.
Second Revised Sheet No. 319.
Second Revised Sheet No. 320.
First Revised Sheet No. 321.
Twelfth Revised Sheet No. 322.
First Revised Sheet No. 323.
Second Revised Sheet No. 324.
Second Revised Sheet No. 325.
Second Revised Sheet No. 326.
Second Revised Sheet No. 327.
First Revised Sheet No. 328.
Second Revised Sheet No. 329.
First Revised Sheet No. 330.
Second Revised Sheet No. 449.
First Revised Sheet No. 524.
First Revised Sheet No. 564.
First Revised Sheet No. 565.
First Revised Sheet No. 582.
First Revised Sheet No. 583.

APPENDIX B—Texas Eastern Transmission Corp. Docket No. RP78-86.

LIST OF INTERVENORS

Intervenors and filing date

Algonquin Customer Group, September 15, 1978.
Carnegie Natural Gas Co., September 13, 1978.
Indiana Gas Co., September 14, 1978.
New Jersey Natural Gas Co., September 15, 1978.
Public Service Electric and Gas Co., September 14, 1978.
South Jersey Gas, September 15, 1978.
United Cities Gas Co., September 11, 1978.
Municipal Defense Group, September 21, 1978.
Consolidated Gas Supply Corp., September 21, 1978.
Columbia Gas Transmission Corp., September 21, 1978.
Long Island Lighting Co., September 20, 1978.
Consolidated Edison Co., September 18, 1978.
Algonquin Gas Transmission, September 20, 1978.
Elizabethtown Transmission Corp., September 18, 1978.
Texas Gas Transmission Corp., September 18, 1978.
National Fuel Gas Supply Corp., September 20, 1978.

[FR Doc. 78-28535 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP75-73 (AP No. 78-3)]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Proposed Changes in FERC Gas Tariff

SEPTEMBER 29, 1978.

Take notice that Texas Eastern Transmission Corp. on September 22, 1978, tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Substitute Forty-third Revised Sheet No. 14.
Substitute Forty-third Revised Sheet No. 14A.
Substitute Forty-third Revised Sheet No. 14B.
Substitute Forty-third Revised Sheet No. 14C.
Substitute Forty-third Revised Sheet No. 14D.

The above tariff sheets are being filed in substitution of Forty-third Revised Sheet Nos. 14, 14A through 14D, previously filed with the Commission on July 31, 1978. Texas Eastern has revised the rates reflected on the above listed tariff sheets to reflect the proper pipeline supplier rates being tracked at August 1, 1978. Texas Eastern has also incorporated into this filing the Zone D flow through of consolidated System LNG Company's exchange charge as previously accepted in the Commission's order issued July 5, 1978.

In addition to the aforementioned changes, the above listed tariff sheets have been revised to comply with Opinion No. 21 issued by the Commission August 9, 1978 in Docket No. RP74-41.

The proposed effective date is September 1, 1978.

Copies of the filing were served on the company's jurisdictional 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 procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 10, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 78-28534 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP72-155 (PGA78-2) and RP78-18]

EL PASO NATURAL GAS CO.

Order Accepting for Filing and Suspending Rate Increase

SEPTEMBER 29, 1978.

On August 31, 1978, El Paso Natural Gas Co. (El Paso) filed revised tariff sheets[1] which incorporate (1) a semi-annual PGA rate increase, (2) changes in base tariff rates to reflect the settlement agreement approved by letter order dated September 5, 1978, in Docket No. RP78-18, and (3) adjustments to settlement rates in accordance with various tracking provisions contained in the Docket No. RP78-18 settlement.[2] El Paso asks that all of its proposed rate changes become effective on October 1, 1978.

The proposed PGA rate increase reflects a 13.04-cent-per-Mcf increase in El Paso's current rate adjustment. The proposed surcharge adjustment is 14.17 cents per Mcf for East-of-California customers and 12 cents per Mcf for California customers. These represent an increase of 1.98 cents for East-of-California customers and a decrease of 4.53 cents for California customers from the previously effective surcharge adjustments.[3] The surcharge adjustments are designed to recover deferred purchased gas costs of $47,957,399 and $14,710,014, respectively. El Paso's PGA is calculated in compliance with the modifications made to its PGA clause in the Docket No. RP78-18 settlement agreement.

Increased purchased gas costs are attributable to contractual price escalations permitted producers under their contracts with El Paso, producer rate increases in accordance with the quarterly escalation provisions of Opinion No. 770-A, and certain emergency purchases made at or below the applicable national rate.

El Paso's PGA increase also reflects the increased cost of purchases from certain reversionary interest owners selling gas under interim agreements. The issue of the rights and duties of these reversionary interest owners remains before the Supreme Court on rehearing from *California* v. *Southland Royalty Company*, 46 LW 4539 (May 31, 1978). Any rate level finally approved by this Commission must therefore be subject to the Court's decision in that case.

For this reason, the Commission shall suspend El Paso's filing for 1 day and shall reserve decision on the overall propriety of El Paso's rates pending

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[1] Twenty-third Revised Sheet No. 3-B to FPC Gas Tariff, Original Volume No. 1. Thirteenth Revised Sheet No. 1-D to FPC Gas Tariff, Third Revised Volume No. 2, Fifteenth Revised Sheet No. 1-C and Eleventh Revised Sheet No. 1-D to FPC Gas Tariff, Original Volume No. 2A.

[2] The August 31, 1978, filing also contains alternative sheets which were developed on the assumption that the settlement agreement in Docket No. RP78-18 would not be approved prior to October 1, 1978. Since the settlement was approved by the Commission on September 5, 1978, the alternative sheets are deemed withdrawn.

[3] The surcharge for El Paso's California customers is less than the surcharge for East-of-California customers because El Paso's tariff permits costs associated with Rhodes Reservoir Storage to be assigned solely to East-of-California customers.

the final outcome of the *Southland* proceeding. El Paso shall be permitted to file revised rates to be effective on October 1, 1978, which rates incorporate all rate changes proposed by El Paso's August 31, 1978, filing except for rate changes attributable to increases in the cost of gas purchased from reversionary interest owners.

El Paso's August 31, 1978, filing also incorporates changes in rates to reflect the settlement approved by the Commission on September 5, 1978, in Docket No. RP78-18. The Commission has reviewed these rate changes and finds that they comport with the terms of the settlement. Accordingly, El Paso's August 31, 1978, rate change filing, insofar as it reflects settlement rates, shall be accepted for filing.

Finally, El Paso's August 31, 1978, filing includes rate adjustments pursuant to advance payment, gas well royalty and transportation cost and revenue tracking provisions of the settlement agreement in Docket No. RP78-18.[4] These tracking adjustments are in compliance with the terms of the settlement and shall be allowed to become effective on October 1, 1978.

The Commission orders: (A) El Paso's proposed tariff sheets filed on August 31, 1978, are accepted for filing and are suspended for 1 day or until October 2, 1978, when they shall be permitted to become effective subject to refund.

(B) Following final Supreme Court action in *California* v. *Southland Royalty Company, supra,* the Commission shall take such further action in this proceeding as may be appropriate.

(C) El Paso shall be permitted to file revised rates to become effective October 1, 1978, without refund obligation (save for continuing refund obligations under previous Commission orders) which exclude increased costs of gas purchased from reversionary interest owners.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-28537 Filed 10-6-78; 8:45 am]

[4] Articles VII, IX and VIII respectively.

[6740-02-M]

[Docket No. ES78-59]

KANSAS CITY POWER & LIGHT CO.

Application

OCTOBER 2, 1978.

Take notice that on September 22, 1978, Kansas City Power & Light Co. (Applicant) filed an eighth supplemental application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $125,000,000 principal amount of short-term, debt instruments to be outstanding at any one time, of which aggregate amount a maximum of $60,000,000 may be in the form of commercial paper, said instruments to be issued not later than December 31, 1979, with maturities not later than December 31, 1980. By prior supplemental order issued December 31, 1977, the Commission authorized Applicant to issue prior to December 31, 1978, up to $100,000,000 short-term debt instruments to be outstanding at any one time, of which aggregate amount up to $45,000,000 could be in the form of commercial paper, with final maturities not later than December 31, 1979.

Applicant is incorporated under the laws of the State of Missouri with its principal business office of Kansas City, Missouri, and authorized to do business in the State of Kansas.

The proceeds will basically be used to finance in part Applicant's construction program to December 31, 1980, and might be used to finance acquisition and storage, prior to use, of coal and oil. The authorization to issue up to $125,000,000 of short-term, debt instruments will allow the Applicant more freedom in selecting the appropriate times under market conditions to fund its short-term debt.

Any person desiring to be heard or to make any protest with reference to the application should, on or before October 17, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). The Application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-28538 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER78-583 and ER78-584]

Mississippi Power & Light Co.

Order Accepting Transmission Rates for Filing, Suspending Rates, Granting Waivers, Consolidating Proceedings, Granting Interventions, and Establishing Procedures

SEPTEMBER 27, 1978.

On August 28, 1978, Mississippi Power & and Light Co. (Mississippi) tendered for filing, by separate transmittal letters dated August 25, 1978, unexecuted bulk power transmission service agreements—Service Schedule E. Bulk Transmission Service—as supplements to (1) its Interconnection Agreement with the City of Clarksdale (Clarksdale), Mississippi, dated February 13, 1976, and (2) its Interconnection Agreement with Greenwood Utilities Commission (Greenwood), Greenwood, Mississippi, dated September 19, 1975.[1] According to Mississippi, the proposed transmission service is not similar to any which Mississippi now provides.[2]

In its transmittal letters Mississippi states that Clarksdale and Greenwood have requested this transmission service be made immediately available and, therefore, Mississippi proposes that the service schedules become effective as of the date they were filed with the Commission. For this reason, Mississippi requests that the Commission waive the thirty (30) day notice requirement of section 35.3 of the Commission's Regulations. Mississippi further requests the Commission to waive its requirements concerning the filing of revenue estimates since, as of August 25, 1978, no schedules of deliveries of power had been developed by the parties.

The service schedules for Clarksdale and Greenwood provide for Mississippi to furnish transmission service over its transmission facilities between each municipality and any other entity receiving or supplying bulk power to which Mississippi is directly or indirectly connected. Mississippi is to furnish both firm and interruptible transmission service over its 115 kv facilities or at such higher voltage as may be available at the points of interconnection.

Notice of Mississippi's filings was issued on September 6, 1978 with protests and petitions to intervene due on or before September 15, 1978. Four petitions to intervene were filed on September 15, 1978.

Clarksdale (in ER78-583) and Greenwood (in ER78-584) filed nearly identical protests and petitions to intervene, and requests that the rates be suspended for one day [3] and the dockets be consolidated. The two Municipalities have raised substantive questions which the parties have not been able to resolve during their negotiations. In

[1] Although Mississippi has had negotiations with both Clarksdale and Greenwood concerning the rate for, and terms and conditions of the proposed transmission service, no agreement was reached and therefore the service schedules were filed without being executed by the parties. See Attachment A for rate schedule designations.

[2] The Interconnection Agreements between Mississippi and the muncipalities provide schedules for "Reserve Capacity", "Firm Capacity", "Economy Energy", and "Unintentional Energy". Both Clarksdale and Greenwood purchase power and energy from Mississippi in the form of certain interchange services.

[3] Clarksdale and Greenwood request that the service agreements be accepted as "additional rates" and make reference to the Order on Rehearing, "Cleveland Electric Illuminating Co.," Docket No. ER78-194, September 5, 1978.

particular, the Municipalities allege in their pleadings that Mississippi has made no distinction in its pricing of firm and interruptible transmission service, that the proposed transmission rate is improperly derived [4] and designed, and that the conditions of providing service are inproper and require clarification. Clarksdale and Greenwood have also requested that the Commission direct a conference among the parties be held to determine whether any of the issues raised can be settled by agreement among the parties.

The Municipal Energy Agency of Mississippi (MEAN) petitioned to intervene in both dockets and also moved for their consolidation. MEAN is a joint agency authorized under Mississippi state law to own and operate generation and transmission facilities, to acquire power and energy, and to coordinate bulk power activities on behalf of its members, eight Mississippi cities—including Clarksdale and Greenwood—which are either interconnected with or are full requirements customers of Mississippi. In its filing MEAN concurs with and adopts the discussion concerning the deficiencies with regard to the proposed transmission service alleged by Clarksdale and Greenwood.

A Protest and Petition to Intervene was also filed by South Mississippi Electric Power Association (SMEPA) in Docket No. ER78-583. SMEPA is an incorporated, non-profit cooperative electric power association organized under Mississippi state law, owned and operated by its members, distribution rural electric power associations serving rural areas in Mississippi. SMEPA states that it is in the process of negotiating an interconnection agreement with Mississippi and asserts that it has been informed by a representative of Mississippi that Mississippi expects to apply in such an agreement ratemaking principles contained in the proposed Clarksdale service schedule, principles to which SMEPA objects.

Review of Mississippi's filing indicates that the proposed transmission rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. We shall therefore accept Mississippi's submittal for filing and suspend the proposed rates for one day, as requested by Clarksdale and Greenwood, making them effective as of August 29, 1978, subject to refund. In so doing, we waive our notice requirements as well as our requirements with regard to the filing of revenue estimates. Furthermore, consolidation of the proceedings in Docket Nos. ER78-583 and ER78-584 is appropriate as similar issues arise in both dockets.

The Commission orders: (A) The proceedings in Docket Nos. ER78-583 and ER78-584 are hereby consolidated for purposes of hearing and decision.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205, 206, 301, 308, and 309 thereof, and pursuant to the Commission's rules of practice and procedure and to the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by Mississippi Power & Light Co.

(C) The Commission waives the notice provisions of § 35.3 of its Regulations and allows the rates tendered for filing on August 28, 1978 to be accepted for filing as of August 27, 1978, and suspends the rates for one day to become effective on August 28, 1978, subject to refund.

(D) The Commission waives the revenue estimate requirements of section 35.13 of its Regulations for the limited purpose of accepting Mississippi's Service Schedule for filing.

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall convene for discussion purposes a conference in this proceeding to be held within thirty (30) days after issuance of this Order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Law Judge is authorized to require Mississippi to file its case-in-chief in support of the proposed rates. Said Law Judge is authorized to establish all procedural dates and to rule upon such motions as are provided for in the Commission's rules of practice and procedure.

(F) For good cause shown, the City of Clarksdale, Mississippi, the Greenwood Utilities Commission of the City of Greenwood, Mississippi, the Municipal Energy Agency of Mississippi, and South Mississippi Electric Power Association are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That participation of these intervenors shall be limited to matters set forth in their petitions to intervene; *and provided, further,* That the admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(G) Nothing contained herein shall be construed as limiting the rights of the parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to § 1.18 of the Commission's rules of practice and procedure.

(H) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A

RATE SCHEDULE DESIGNATIONS

Mississippi Power & Light Co.

(1) Supplement No. 5 to Rate Schedule FPC No. 239 (Greenwood Utilities Commission, Greenwood, Mississippi).
(2) Supplement No. 5 to Rate Schedule FPC No. 243 (Clarksdale, Mississippi).

[FR Doc. 78-28539 Filed 10-6-78; 8:45 am]

[4] Clarksdale and Greenwood suggest that Mississippi apparently intends to interrupt firm service to them before interrupting service to its native load, and that, if this is the case, the fact has not been properly reflected in the rate for the transmission service.

[6740-02-M]

[Project No. 5]

MONTANA POWER CO.

Filing of Settlement Agreement

SEPTEMBER 29, 1978.

Take notice that on August 31, 1978, The Montana Power Co. (Company), the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont. (Tribes), and the Secretary of the Interior (Secretary) filed a motion for certification to the Commission of an agreement settling all issues in this proceeding. The Montana Consumer Counsel also joined in this settlement agreement. The settlement agreement was certified to the Commission by the Presiding Administrative Law Judge on September 11, 1978.

If accepted and approved by the Commission, the settlement agreement would settle all of the issues concerning the readjustment of the annual charges paid by the Company to the Tribes for the use of Indian lands for the Kerr Hydroelectric Project located in part of the Flathead Indian Reservation in Montana.[1]

The Settlement Agreement provides that the annual charge be increased by $1,650,000 to $2,600,000 effective May 20, 1975.[2] It further provides that the sum of $4,650,000 to be paid 10 days after Commission approval of the settlement agreement by the Compa-

[1] This proceeding was instituted by order issued July 19, 1977.

[2] The annual charge had been set at $950,000, effective May 20, 1959, by Federal Power Commission, Opinion No. 529, 38 FPC 766 (1967)); *affirmed, The Montana Power Co.*, 459 F.2d 863 (D.C. Cir. 1972), *cert. denied*, 408 U.S. 930 (1972).

ny to the Tribes as annual charges for the period May 20, 1969, to May 20, 1975, shall be deemed payment in full for that period.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 1.8 or 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before October 13, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB
Secretary.

[FR Doc. 78-28544 Filed 10-6-78; 8:45 am]

[6740-02-M]

Docket Nos. CP78-398, etc.]

PACIFIC INTERSTATE TRANSMISSION CO., ET AL

Technical and Settlement Conference

OCTOBER 2, 1978.

Pacific Interstate Transmission Co., Docket No. CP78-398; Michigan Consolidated Gas Co., Docket No. CP78-401; Transwestern Pipeline Co., Docket No. CP78-418; Michigan Wisconsin Pipe Line Co., Docket No. CP78-452.

Take notice that at 9:30 a.m. on Tuesday, October 17, 1978, Staff will meet with representatives of the above-captioned companies for the purposes of obtaining clarification of issues and certain data already submitted regarding the matters contemplated in the several applications herein, and possible discussion of settlement of some or all of the various issues.

The conference will be held in the Commission's offices at 825 North Capitol Street NE., and all interested persons may at their option attend; however, their attendance will not be deemed to authorize intervention in the captioned proceedings.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-28540 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-50]

SUN OIL CO.

Order Granting Petition for Special Relief and Granting Intervention

SEPTEMBER 27, 1978.

On April 13, 1978, Sun Gas Co., a Division of Sun Oil Co. (Delaware) (Sun) filed a petition for special relief in Docket No. RI78-50 pursuant to the special exception for minor projects set forth in § 2.76(d)(1) of the Commission's General Policy and Interpretations. Sun requests a base rate of 46.12 cents per Mcf for the sale of its 75 percent working interest in the gas produced from the Headlee "A", Well No. 1, Mocane-Laverne Field, Harper County, Okla. (Oklahoma Panhandle Area), which is being sold to Michigan Wisconsin Pipe Line Co. (Michigan).[1]

The petition was noticed on May 23, 1978, and published in the FEDERAL REGISTER on May 31, 1978 (43 FR 23644) with petitions to intervene and protests due on June 14, 1978. On June 14, 1978, Michigan Wisconsin Pipe Line Co. filed a petition to intervene which stated that it is willing to amend its existing contracts to increase the base price up to 46.12 cents per Mcf if such rate is approved on a special relief basis.

Presently Sun, a large producer, is selling its gas under its contracts with Michigan dated April 24, 1959, and December 18, 1961, on file as Sun's FERC Gas Rate Schedule Nos. 365 and 146, Certificate Docket Nos. G-18630 and CI62-1111, respectively, and receiving a base rate of 24.5 cents at 14.65 psia for this gas.

Sun proposes a recompletion workover to add perforations in the Morrow sand at a cost of $15,659 in order to continue producing this well. This expenditure will enable Applicant to produce an additional 105,075 Mcf of gross working interest gas over the next 4 years according to Sun's reserve estimate.

Sun's proposed rate increase of 21.62 cents/Mcf at 14.65 psia will result in an increase in revenue of $19,878 over the life of the project which is less than $50,000; the proposed new investment of $15,659 exceeds 25 percent of the increased revenue; and the base rate of 46.12 cents/Mcf at 14.65 psia requested by Sun is less than 50 cents/Mcf at 14.73 psia; all as specified in § 2.76(d)(1). Thus, the petition meets the criteria set forth therein.

The Commission finds. (1) It is in the public interest to grant Sun's petition for special relief.

(2) The petition for special relief filed by Sun meets the criteria set forth in section 2.76(d)(1) of the Commission's General Policy and Interpretations.

(3) Participation by Michigan Wisconsin Pipe Line Co. in this proceeding may be in the public interest.

The Commission orders. (A) The petition for special relief by Sun Gas Co. in Docket No. RI78-50 is hereby granted.

(B) Sun is authorized to charge and collect from Michigan a base rate of 46.12 cents/Mcf at 14.65 psia effective upon the date that the proposed work is completed or the date of the Commission order herein, whichever is later, subject to the conditions set forth in paragraphs (C) and (D) below.

(C) Within 30 days of the effective date specified above, Sun must file a statement signed by Michigan that the proposed work has been completed to Michigan's satisfaction.

(D) Sun must file executed contract amendments providing for the payment of the approved rate and Notices of Independent Producer Rate Change within 30 days of the date of the order herein.

(E) Michigan Wisconsin Pipe Line Co. is permitted to intervene in the captioned proceeding subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; *And provided, further,* That the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this docket.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-28541 Filed 10-6-78; 8:45 am]

[1] The 25 percent working interest of Champlin Petroleum Co. is not covered by this petition for special relief.

[6740-02-M]

[Docket Nos. RP69-13, etc.]

TEXAS EASTERN TRANSMISSION CORP. ET AL.

Filing of Pipeline Refund Reports and Refund Plans

OCTOBER 2, 1978.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix below.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washing-

ton, D.C. 20426, on or before October 16, 1978. Copies of the respective filings are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Sept. 5, 1978	Texas Eastern	RP69-13	Report.
Sept. 13, 1978	Alabama-Tennessee	RP73-77	Do.
Sept. 18, 1978	South Texas	AR64-2 et al	Plan.
Sept. 19, 1978	South Georgia	RP73-49	Report.
Sept. 22, 1978	Florida Gas	AR64-2	Plan.
Sept. 25, 1978	Southern Natural	AR61-2	Report.
Sept. 28, 1978	Alabama-Tennessee	RP73-77	Do.

[FR Doc. 78-28542 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-88]

TRANSWESTERN PIPELINE CO.

Order Accepting for Filing and Suspending Proposed Rate Increase and Initiating Hearing

SEPTEMBER 29, 1978.

On August 31, 1978, Transwestern Pipeline Co. (Transwestern) filed in Docket No. RP78-88 revised tariff sheets [1] proposed to be effective October 1, 1978, which would increase its annual jurisdictional revenues by approximately $14 million or about 5.5 percent. For the reasons stated below, the Commission shall accept the revised tariff sheets for filing, suspend them for 5 months and set the matter for hearing.

Public notice of Transwestern's August 31, 1978, filing was issued on September 7, 1978, providing for protests or petitions to intervene to be filed on or before September 21, 1978. On September 11, 1978, a notice of intervention was filed by the Public Utilities Commission for the State of California.

Transwestern states that the principal reasons for the proposed rate increase are to recover increases in labor, supplies, and expenses; to recover an appropriate rate of return; to recover an appropriate overall depreciation rate; and to reflect lower sales quantities than those on which its current rates are based upon.

Based on a review of Transwestern's filing herein, the Commission finds that the proposed higher rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Transwestern's proposed rate increase for filing, suspend its use for 5 months or until March 1, 1979, when it shall become eligible to become effective in the manner prescribed in section 4 of the Natural Gas Act, subject to refund, and shall set the matter for hearing.

Transwestern's filed tariff sheets also propose revisions [2] which establish carrying charges on the balance of the unrecovered purchased gas cost account and which also reflect the new base average gas cost of 71.26¢/dth. This request for the inclusion of carrying charges is based on the fact that all parties agreed in the settlement of Transwestern's last general rate increase filing in Docket No. RP77-19 to permit Transwestern to include carrying charges on its unrecovered purchased gas costs account. The settlement in Docket No. RP77-19 involves other issues and has not been accepted and approved by this Commission. Further, the Commission's regulations as presently constituted do not permit carrying charges on unrecovered purchased gas costs, absent specific waiver by the Commission for good cause shown. Accordingly, we shall reject without prejudice the proposed revisions, without prejudice to Transwestern's right to refile these revisions if the Commission approves the settlement in Docket No. RP77-19 or its right to file tariff sheets providing for carrying charges if those sheets conform to any rule adopted in Docket No. R-406. Furthermore, Transwestern may refile these tariff sheets excluding the proposed carrying charges provision contained therein.

The Commission finds. It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates proposed by Transwestern and that the same be accepted for filing and suspended as hereinafter ordered.

The Commission orders. (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Transwestern.

(B) Pending hearing and decision Transwestern's 11th Revised Sheet Nos. 5 and 6 are accepted for filing and suspended for 5 months, until March 1, 1979, when they shall be permitted to become effective, subject to refund, upon motion filed by Transwestern in accordance with the provisions of the Natural Gas Act.

(C) Transwestern's Second Revised Sheet No. 74 is rejected without prejudice to Transwestern's right to refile it if the Commission approves the settlement in Docket No. RP77-19 or its right to file tariff sheets providing for carrying charges if those sheets conform to any rule adopted in Docket No. R-406.

(D) The Commission staff shall prepare and serve top sheets on all parties on or before January 16, 1979.

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-28543 Filed 10-6-78; 8:45 am]

[6740-02-M]

[Project No. 5]

MONTANA POWER CO.

Renotice of Filing of Settlement Agreement [1]

OCTOBER 6, 1978.

Take notice that on August 31, 1978, the Montana Power Co. (Company), the Confederated Salish and Kootenai

[1] Eleventh Revised Sheet Nos. 5 and 6 to FERC Gas Tariff, Second Revised Volume No. 1.

[2] Second Revised Sheet No. 74.

[1] This notice corrects an inadvertent omission in the first notice of the settlement agreement issued Sept. 29, 1978.

Tribes of the Flathead Reservation, Mont. (Tribes), and the Secretary of the Interior (Secretary) filed a motion for certification to the Commission of an agreement settling all issues in this proceeding. The Montana Consumer Counsel also joined in this settlement agreement. The settlement agreement was certified to the Commission by the presiding administrative law judge on September 11, 1978.

If accepted and approved by the Commission, the settlement agreement would settle all of the issues concerning the readjustment of the annual charges paid by the Company to the Tribes for the use of Indian lands for the Kerr hydroelectric project located in part of the Flathead Indian Reservation in Montana.[2]

The settlement agreement provides that the annual charge be increased by $1,650,000 to $2,600,000 effective May 20, 1975.[3] It further provides that the sum of $4,650,000 to be paid 10 days after Commission approval of the settlement agreement by the Company to the Tribes as annual charges for the period from May 20, 1975, through December 31, 1977. The sums previously paid by the Company to the Tribes from May 20, 1969, to May 20, 1975, shall be deemed payment in full for that period.

Anyone desiring to be heard or to make any protest about this settlement agreement should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 1.8 or 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any protest or petition to intervene must be filed on or before October 20, 1978. The Commission's address is 825 North Capitol Street NE., Washington, D.C. 20426.

The settlement agreement is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-28692 Filed 10-6-78; 8:45 am]

[2]This proceeding was instituted by order issued July 19, 1977.

[3]The annual charge had been set at $950,000, effective May 20, 1959, by the Federal Power Commission, opinion No. 529, 38 FPC 766 (1967)); *affirmed, The Montana Power Co.*, 459 F. 2d 863 (D.C. Cir. 1972), *Cert. denied*, 408 U.S. 930 (1972).

[3128-01-M]

Office of General Counsel

REQUESTS FOR INTERPRETATION

Month of September 1978

Notice is hereby given that during the month of September 1978, the requests of interpretation listed in the appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Notice of subsequently received requests will be published at the end of each calendar month. Copies of the requests for interpretation listed herein are on file in DOE's Public Reading Room, Information Access Office, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Interested parties may submit written comments on the listed interpretation requests on or before November 9, 1978. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 5134, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information, contact Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9070.

EZRA C. LEVINE,

Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

OCTOBER 3, 1978.

APPENDIX.—*List of Requests for Interpretation Received by the Office of General Counsel*

[Month of September 1978]

Date received	Name and location of requestor	File No.
Sept. 11	Universal Mineral Corp., L. L. Shackelford, 1 Metro Square, Suite 274, 2655 Villa Creek Dr., Dallas, Tex. 77001. Issue: Does a property with an average daily production rate of less than 10 barrels per well per day qualify for the stripper well lease exemption (10 CFR 212.54) if the property experienced substantial down time during the 12 mo. qualifying period.	A-346
Sept. 26	John H. Hendrix Corp., L. E. Sawyer, Jr., Cotton, Bledsoe, Tighe, Morrow & Dawson, Suite 1930, Wilco Bldg., Midland, Tex. 79701. Issue: May a crude oil producer again treat two separate reservoirs which it had designated as separate properties pursuant to § 212.72 and Ruling 1977-1, as a single property, in order to qualify for the stripper well lease exemption as set forth in § 212.54 and Ruling 1977-7.	A-347

[FR Doc. 78-28343 Filed 10-6-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 984-3; OPP-50384]

ROHM & HAAS CO. ET AL.

Issuance of experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are 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. 707-EUP-85. Rohm & Haas Co., Philadelphia, Pa. 19105. This experimental use permit allows the use of 120 pounds of the herbicide oxyfluorfen on almonds, apricots, grapes, peaches, nectarines, and plums to evaluate control of many annual grasses and broadleaf weeds. A total of 60 acres is involved; the program is authorized only in the State of California. The experimental use permit is effective from August 15, 1978, to August 15, 1979. Temporary tolerances for residues of the active ingredient in or on apricots, peaches, nectarines, almonds, prunes, plums, and grapes have been established. (Room E-315, telephone 202-755-4851.)

No. 10182-EUP-10. ICI Americas, Inc., Wilmington, Del. 19897. This experimental use permit allows the use of one pound of the rodenticide 3-(3-4'-bromo [1,1'-biphenyl] 4-yl)-1,2,3,4-tetrahydro-1-naphthalenyl] 4-hydroxy-2H-1-beznopyran-2-one in or around buildings to evaluate control of Norway and roof rats and house mice. The program is authorized only in the States of Alabama, Alaska, Arizona, Arkansas,

California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, North Dakota, South Dakota, tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from August 10, 1978, to August 10, 1979. (Room E-229, telephone 202-755-9315.)

No. 41989-EUP-1. Mr. Bob Davis, Titusville, Fla. 32780. This experimental use permit allows the use of 8,000 gallons of a limonene product insecticide on from 1,600 to 5,000 fire ant mounds to evaluate control of fire ants. The program is authorized only in the States of Florida and North Carolina. The experimental use permit is effective from July 26, 1978, to July 26, 1979. (Room E-229, telephone 202-755-9315.)

Interested parties wishing to review the experimental use permits are referred to the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA headquarters office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 State. 973; 89 Stat. 751, 7 U.S.C. 136(a) et seq.)

Dated: September 28, 1978.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 78-28311 Filed 10-6-78; 8:45 am]

[6560-01-M]

[FRL 983-8; OPP-180235]

FOURTEEN COTTON PRODUCING STATES

Issuance of Specific Exemptions To Use Ambush, Bolstar 6, Curacron, Pounce and Pydrin To Control the Bollworm/Budworm Complex

The Environmental Protection Agency (EPA) has granted specific exemptions to 14 States (hereafter referred to as the "Applicants") to use Bolstar 6, Curacron 6E and the synthetic pyrethroids Ambush, Pounce, and Pydrin on a total of up to 4,623,500 acres of cotton to control the bollworm/budworm complex. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the applications on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

STATES AND ACREAGE

The agency requesting the exemption and acreage to be treated in each State are as follows: Alabama Department of Agriculture and Industries, 365,000 acres; Arizona Commission of Agriculture and Horticulture, 300,000 acres; Arkansas Department of Commerce, 300,000 acres; California Department of Food and Agriculture, 1,000,000 acres; Florida Department of Agriculture and Consumer Services, 3,500 acres; Georgia Department of Agriculture, 200,000 acres; Louisiana Department of Agriculture, 300,000 acres; Mississippi Department of Agriculture and Commerce, 1,250,000 acres; New Mexico Department of Agriculture, 20,000 acres; North Carolina Department of Agriculture, 35,000 acres; Oklahoma Department of Agriculture, 75,000 acres; South Carolina Division of Regulatory and Public Service Programs, 175,000 acres; Tennessee Department of Agriculture, 150,000 acres; and Texas Department of Agriculture, 450,000 acres.

HISTORY OF THE BOLLWORM/BUDWORM COMPLEX ON COTTON

The bollworm (*Heliothis zea*) and the tobacco budworm (*Heliothis virescens*) are two major pests on much of the 10-12 million acres of cotton grown in the United States. According to the Applicants, increasingly severe and widespread losses have occurred over the past few years, especially in the higher rainfall areas, amounting to 47 percent of the Cotton Belt. The three main reasons for the increasing damage to the cotton industry, the Applicants claim, are: an increase in the level of resistance by the tobacco budworm to currently registered insecticides; the voluntary withdrawal of chlordimeform and the withdrawal of other insecticides as a result of regulatory action; and an increase in the population of the tobacco budworm. Currently there are three methods employed in controlling the budworm/bollworm complex. The first is through the use of cultural practices, which the Applicants claim is useful only when used in conjunction with pesticide spray programs; the second method is by growing short-season varieties of cotton, but varieties of these adapted to higher rainfall areas are not always available; the third is through the use of insecticides and microbial agents, but, as mentioned above, there is growing resistance to these.

Chlordimeform had been used effectively against the bollworm/budworm complex until its voluntary withdrawal from the market in 1976. This year, the manufacturers of chlordimeform, Ciba-Geigy and Nor-Am, will market this insecticide under extremely stringent safeguards. Because of the restrictions placed on application, there will be only 300,000 gallons (1.2 million pounds active ingredient) of chlordimeform formulation available this year. Since it will be used at half the maximal dosage rate, however, its effectiveness may be reduced. From 800,000 to 1,600,000 acres of cotton will be able to be treated with this amount of chlordimeform, or from approximately 17.3 to 34.6 percent of the requested acreage under these exemptions. Thus, while chlordimeform could reduce the emergency, it will not eliminate the need for new pesticides. Currently, registered insecticides (other than chlordimeform) in many cases failed to achieve economic control, that is, prevention of 5 percent or more square damage, of the bollworm/budworm complex.

ECONOMIC ANALYSIS

Cotton, a fiber, oil, and feed plant, is the highest value crop grown in the Cotton Belt states and ranks fourth in value among all crops grown in the United States. Approximately 40 percent of the cotton produced in this country is exported. EPA has concluded that a loss of from 20 to 40 million dollars can be expected if an efficacious control program is not made available.

PROPOSED CONTROL PROGRAM

The Applicants propose to use Bolstar 6, manufactured by Mobay Chemical Co.; Ambush, manufactured by ICI Americas; Pounce, manufactured by FMC Corp.; Pydrin, manufactured by Shell Chemical Co., and Curacron 6E, manufactured by Ciba-Geigy Corp. State-certified applicators will make from 5 to a maximum of 10 applications at 7-day intervals using air or ground equipment. Knowledgeable scouts will determine the existence of an emergency in each State using set criteria and State agencies and representatives of the manufacturers of the pesticides will monitor the applications to guard against accidental environmental contamination. Crop rotation limits, grazing restrictions, and preharvest intervals have been imposed to keep the residue levels of the active ingredients within the levels deemed adequate to protect human health. Each State will also take the

precautions necessary to protect aquatic organisms from the five pesticides and to protect bees from drifts of Ambush, Curacron 6E, Pounce, and Pydrin.

After reviewing the applications and other available information, EPA has determined that (a) a pest outbreak of the bollworm/budworm complex has occured or is about to occur; (b) there is no pesticide presently registered and available in sufficient quantities for economic use to control the budworm/bollworm complex in cotton fields in the 14 States previously named; (c) there are no alternative mehods of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the budworm/bollworm complex is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicants have been granted specific exemptions to use the pesticides noted above until October 31, 1978, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The following products are authorized under these specific exemptions:

A. Bolstar 6, which contains 6 pounds of *O*-ethyl *O*-[4-(methylthio)-phenyl] S-propyl phosphorodithioate per gallon, at a dosage rate of 2/3 to 2 pints of product (0.5 to 1.5 pounds active ingredient (a.i.)), per acre;

B. Ambush, which contains 2 pounds of permethrin, (3-phenoxyphenyl) methyl (±) cis-trans-3-(2,2-dichloroethenyl) 2,2-dimethylcyclopropanecarboxylate, per gallon, at a dosage rate of 0.4 to 0.8 pint of product (0.1 to 0.2 pound a.i.) per acre;

C. Pounce 3.2 EC (formerly Matadan and FMC 33297 3.2 EC), which contains 3.2 pounds of permethrin, at a dosage rate of 4.0 to 8.0 fluid ounces of product (0.1 to 0.2 pound a.i.) per acre;

D. Pydrin (SD-43775), which contains 2.4 pounds of cyano (3-phenoxyphenyl) methyl-4-chloro-alpha (1-methylethyl) benzeneacetate per gallon, at a dosage rate of 5⅓ to 10⅔ fluid ounces of product (0.1 to 0.2 pound a.i.) per acre; and

E. Curacron 6E, which contains 6 pounds of 0-(4-bromo-2-chlorophenyl) O-ethyl S-propyl phosphorothioate per gallon, at a dosage rate of 0.66 to 1.4 pints of product (0.495 to 1.05 pounds a.i.) per acre;

2. Each State may treat the number of acres mentioned above provided that an emergency condition as defined in paragraph 5 below exists in each area designated for treatment;

3. Applications may be made by either ground or air;

4. Five applications of the pesticides named above made at approximately five-seven day intervals should provide adequate control of the bollworm/budworm complex. However, under a heavy infestation of these pests, up to ten applications are authorized;

5. Before the five insecticides can be used in a given area, an emergency condition must exist. The minimal criteria which must be used in determining when an emergency condition exists are as follows:

A. If an employee of the State Extension Service or State Commission of Agriculture or a person under the direct supervision of the State, determines after the cotton has bloomed that (1) 5 percent or more of the squares are damaged by the bollworm/budworm complex, and (2) use of registered insecticides in accordance with their label is not providing economic control, an emergency condition may be declared, or

B. Five percent or more of the squares are damaged by the bollworm/budworm complex. Such person, as designated above, will determine that an emergency condition exists or is imminent because of the tobacco budworm, using one or more of the following criteria:

(1) Light trap ratios of bollworm/budworm catches indicate that a majority of the eggs laid are budworm eggs;

(2) Adult sugar bait lines indicate that a majority of the moths present are budworm;

(3) Number of budworm moths caught in sex attractant traps;

(4) Identification of field-collected larvae to species (to verify the presence of the tobacco budworm);

(5) The historical development of the budworm in the area, in particular, a past history of severe infestation; and

(6) Proper use of registered pesticides according to their label is not providing economic control of this pest.

6. All applicators, either private or commercial, must be certified by the State. The State shall be responsible for supervision of all spray treatment;

7. Cotton scouts must be either State Extension personnel, technicians trained by State Extension agents, or State-licensed private consultants. The State must insure that all personnel in the scouting program for bollworm/budworm are capable of understanding the emergency criteria contained in paragraph 5 above. Scouts are not permitted to determine whether an emergency condition exists unless they also have the qualification set forth in paragraph 5A.

8. No individual may purchase or use any pesticide approved for use under the specific exemption program until it has been determined that an emergency condition exists in the area in which the user grows cotton. Growers must obtain authorization from the State to purchase these chemicals and the State must prohibit dealers from selling and distributing these chemicals unless such authorization is made. Careful records must be kept regarding the amounts of each insecticide sold and applied, total acreage treated, and general benefits realized from the treatments;

9. Monitoring systems will be set up both by State agencies and also by Mobay, Ciba-Geigy, FMC, ICI, and Shell to guard against accidental environmental contamination;

10. The following preharvest intervals (PHI) and crop rotational limitations (CRL) will be observed:

A. Bolstar 6: 21-day PHI for Arizona, New Mexico, and California, 14-day PHI for the other 12 States. 60-day CRL for all 14 States;

B. Ambush: 14-day PHI, 60-day CRL;

C. Pounce: 14-day PHI, 60-day CRL;

D. Pydrin: 21-day PHI, 60-day CRL;

E. Curacron 6E: 14-day PHI, no crop rotational limit, provided that no more than six pounds a.i. per acre per season is applied;

11. Cattle may not be grazed on treated fields nor may they be fed the cotton forage from treated fields;

12. Cottonseed and byproducts of cottonseed may enter interstate commerce provided the residue level of the active ingredient in the authorized pesticide products does not exceed the following:

A. Bolstar 6: 0.5 part per million (ppm) in or on cottonseed;

B. Permethrin (Pounce and Ambush): 0.5 ppm in or on cottonseed;

C. Pydrin: 0.2 ppm in or on cottonseed;

D. Curacron 6E: cottonseed—3.0 ppm, cottonseed hulls—6.0 ppm, soapstock—15 ppm;

13. Meat, meat byproducts, milk, and eggs may enter interstate commerce provided the residue level of the active ingredient in the authorized pesticide products does not exceed the following levels:

A. Ambush, Pounce (a.i. permethrin): meat, meat byproducts of cattle, goats, hogs, horses, and poultry—0.05 ppm; milk and egg—0.05 ppm;

B. Bolstar 6 (a.i. O-ethyl-O-4-methylthiophenyl-S-propylphosphorodithioate): meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep—0.01 ppm; milk and eggs—0.001 ppm;

C. Curacron 6E (a.i. O-(4-bromo-2-chlorophenyl)-O-ethyl-S-propylphosphorothioate): meat, fat, or meat byproducts of cattle, goats, hogs, horses, poultry, and sheep—0.05 ppm; milk—0.01 ppm; eggs—0.05 ppm; and

D. Pydrin (a.i. cyano-(3-phenoxyphenyl)methyl - 4 - chloro-alpha-(1-methylethyl)benzeneacetate: fat of meat—0.02 ppm; fat of milk—0.02 ppm. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of these actions;

14. Ambush, Bolstar 6, Curacron 6E, Pounce and Pydrin may present a hazard to aquatic organisms. The Governor's designee must implement each State's plan to avoid contamination of areas where fish and aquatic invertebrates are important resources. A copy of this plan shall be made available to employees of the EPA:

15. Ambush, Curacron 6E, Pounce, and Pydrin are toxic to bees. Care must be taken to avoid drift to nontarget areas;

16. All label precautions, directions, and restrictions must be adhered to;

17. All personnel involved in the preparation and application of Ambush, Pounce, and Pydrin must wear protective clothing (long-sleeve shirts, full-length trousers, and nonpermeable boots) and a respirator. During the mixing and loading operations, gloves and an apron must also be worn;

18. Each State must submit a final report which summarizes the following: amount of each pesticide used, the acreage treated, and the benefits realized from this program. This report must be submitted by December 31, 1978;

19. Any adverse effects (such as fish kills and phytotoxicity) will be reported immediately to the EPA; and

20. All unopened, unused containers will be returned to the manufacturer at the end of the 1978 growing season. Open containers must be disposed of in accordance with the label directions.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: October 2, 1978.

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

[FR Doc. 78-28314 Filed 10-6-78; 8:45 am]

[6560-01-M]

[FRL 984-2; OPP-180238]

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Issuance of Specific Exemption To Use Terramycin To Control X-disease on Peach and Nectarine Trees

The Environmental Protection Agency (EPA) has granted a specific exemption to the New York Department of Environmental Conservation (hereafter referred to as the "Applicant") to use a maximum of 33 pounds of Terramycin formulation for the control of X-disease on peach and nectarine trees located in nine counties in New York. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., room E-315, Washington, D.C. 20460.

The Applicant requested approval to use Terramycin Tree Injection Formula (oxytetracycline hydrochloride) on 3,000 peach and cherry trees located in Columbia, Dutchess, Monroe, Niagara, Orange, Orleans, Ulster, Wayne, and Westchester Counties, to control X-disease, which is caused by a pathogenic mycoplasma. X-diseased chokecherry bushes have always been associated with diseased nectarine and peach trees. Disease spread drops sharply when chokecherry bushes are removed from areas near infected orchards. The disease is transmitted from this host plant to nectarine and peach trees by several species of leafhoppers. These species of leafhoppers do not normally live on cultivated peach or nectarine trees; they occasionally stray or are forced by strong winds into commercial orchards and transmit the disease organism through chance feedings. The first indication of infection on a peach tree is on its foliage. Leaves on isolated branches tend to curl inward and develop water-soaked spots which turn yellow to reddish purple. Shortly thereafter, the affected leaves drop. Fruit set may appear normal, but most fruit on infected branches will drop prematurely. In 2 or 3 years, the entire tree shows symptoms.

There are no EPA-registered pesticides available for the control of X-disease in peach and nectarine trees. The traditional mode of suppression has been elimination of the chokecherry population. The Applicant stated that the chokecherry eradication has not been entirely successful because of the wide distribution of this plant in hedgerows and woodlots, and the inability of owners to approach control on neighboring property, public lands, rights-of-way, and roadsides. According to the Applicant, X-disease has continued to spread, and there has been a consistent rise in the percentage of infection in the State because of these factors.

It is estimated that of the 30,000 peach and nectarine trees in the Hudson Valley, 10 percent are infected with X-disease. According to the Applicant, if 2,000 trees can be returned to the average production level in the State, approximately $25,000 could be saved. This amount does not include the saving resulting from not having to replace diseased trees.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of X-disease has occurred; (b) there is no pesticide presently registered and available for use to control X-disease in New York; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the X-disease is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 1, 1978, to the extent and in the manner set forth in the application. The specific exemption will be conducted in accordance with the following program:

1. Terramycin Tree Injection Formula (containing oxytetracycline hydrochloride), EPA Reg. No. 1007-79, manufactured by Pfizer Chemical Division, is authorized. The product shall be supplementally labeled by Pfizer for use in New York against X-disease;

2. Application rate shall be at a maximum of 5.0 grams oxytetracycline hydrochloride formulation per tree;

3. A single application of Terramycin may be made post-harvest, but before leaf fall;

4. A maximum of 3,000 peach and nectarine trees located in the nine counties named above may be treated;

5. A maximum of 33 pounds of the active ingredient may be applied;

6. Application of Terramycin may be made by trunk infusion and pressure methods;

7. Application of Terramycin shall be made by private applicators from mid-August until November 1, 1978;

8. County Extension Service horticultural agents and New York State University personnel shall dispense information concerning treatment and program criteria. Supplemental bulletins shall be provided by Pfizer, giving dosage and treatment directions. Records of purchases and quantity purchased shall be required of Pfizer or their elected distributor. Program follow-up and evaluation shall be performed by the Applicant and the New York State Extension Service;

9. The Applicant shall submit a report to EPA by January 1, 1979, summarizing the results of this program;

10. A residue level of oxytetracycline hydrochloride in or on peaches and nectarines not exceeding 0.1 ppm has been deemed adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

11. All label precaution must be followed; and

12. The Applicant shall inform EPA immediately of any adverse effects resulting from this program and shall be responsible for the performance of all provisions of this exemption.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*).)

DATED: September 27, 1978.

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

[FR Doc. 78-28312 Filed 10-6-78; 8:45 am]

[6560-01-M]

[FRL 983-6]

MICHIGAN DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Terramycin To Control X-disease on Peach and Cherry Trees

The Environmental Protection Agency (EPA) has granted a specific exemption to the Michigan Department of Agriculture (hereafter referred to as the "Applicant") to use a maximum of 305.5 pounds of Terramycin formulation for the control of X-disease on peach and cherry trees located in 21 counties in Michigan. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Room E-315, Washington, D.C. 20460.

The Applicant requested approval to use Terramycin Tree Injection Formula (oxytetracycline hydrochloride) on 15,000 peach trees and 9,000 cherry trees to control X-disease, which is caused by a pathogenic mycoplasma. X-diseased chokecherry bushes have always been associated with diseased cherry and peach trees. Disease spread drops sharply when chokecherry bushes are removed from areas near infected orchards. The disease is transmitted from this host plant to cherry and peach trees by several species of leafhoppers. These species of leafhoppers do not normally live on cultivated peaches or cherries; they occasionally stray or are forced by strong winds into commercial orchards and transmit the disease organism through chance feedings. The first indication of infection in a peach tree is on its foliage. Leaves on isolated branches tend to curl inward and develop water-soaked spots which turn yellow to reddish purple. shortly thereafter, the affected leaves drop. Fruit set may appear normal, but most fruit on infected branches will drop prematurely. In 2 or 3 years, the entire tree shows symptoms.

There are no EPA-registered pesticides available for the control of X-disease in peach and cherry trees. The traditional mode of suppression has been elimination of the chokecherry population. The Applicant stated that the chokecherry eradication has not been entirely successful because of budget limitations in the State, manpower, and inability of owners to approach control on neighboring property, public lands, rights-of-way, and roadsides. According to the Applicant, there has been a consistent rise in the percentage of infection in the State because of these factors. The 1977 estimated increase in infected peach trees has been placed at 16 percent.

It is estimated that there are 236,000 trees infected with X-disease. Of this total, only 10 percent can be treated per year in this program. Restoration of this amount of trees to full crop production would prevent an economic loss of approximately $127,900. This amount does not include the saving resulting from not having to replace diseased trees.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of X-disease had occurred; (b) there is no pesticide presently registered and available for use to control X-disease in Michigan; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the X-disease is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 1, 1978, to the extent and in the manner set forth in the application. The specific exemption will be conducted in accordance with the following program:

1. Terramycin Tree Injection Formula (containing oxytetracycline hydrochloride), EPA Reg. No. 1007-79, manufactured by Pfizer Chemical Division, is authorized. The product shall be supplementally labeled by Pfizer for use in Michigan against X-disease;

2. Application rate shall be at a maximum of 1.25 grams oxytetracycline hydrochloride (active ingredient) per tree;

3. A single application of Terramycin may be made post-harvest, but before leaf fall;

4. A maximum of 24,000 peach and cherry trees located in eleven counties adjoining Lake Michigan to the Grand Traverse Bay region plus the 10 inland counties of Cass, St. Joseph, Kalamazoo, Barry, Kent, Montcalm, Macomb, Livingston, Lapeer, and Oakland, may be treated;

5. A maximum of 305.5 pounds of Terramycin formulation (66 pounds active ingredient) may be applied;

6. Application of Terramycin may be made by trunk infusion and pressure methods;

7. Application of Terramycin shall be made by private applicators from mid-August until November 1, 1978;

8. county Extension Service horticultural agents and Michigan State University personnel shall disperse information concerning treatment and program criteria. Supplemental bulletins shall be provided by Pfizer, giving dosage and treatment directions. Records of purchases and quantity purchased shall be required of Pfizer or their elected distributor. Program follow-up and evaluation shall be performed by the Applicant and the Michigan State Extension Service;

9. The Applicant shall submit a report to EPA by January 31, 1979, summarizing the results of this program;

10. A residue level of oxytetracycline hydrochloride in or on peaches and cherries not exceeding 0.1 ppm has been deemed adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

11. All label precautions must be followed; and

12. The Applicant shall inform EPA immediately of any adverse effects resulting from this program and shall be responsible for the performance of all provisions of this exemption.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*).)

DATED: September 27, 1978.

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

[FR Doc. 78-28316 Filed 10-6-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

FM BROADCAST APPLICATION

Ready and Available for Processing Pursuant to § 1.573(d) of the Commission's Rules

Adopted: October 2, 1978.
Released: October 3, 1978.

By Chief, Broadcast Facilities Division.

Cutoff date: November 7, 1978.

Notice is hereby given that the FM Broadcast application listed below will be considered as ready and available for processing on November 8, 1978. Since the listed application is timely filed and mutually exclusive with the earlier-filed and cutoff application of Communicators, Inc. (KRNA) (File No. BPH-10,439), no other applications which involve conflict with these applications may be filed. Rather, the purpose of this notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under § 1.522(a)(2) of the rules and pleadings to specify issues pursuant to § 1.584.

BPH-10,538—NEW, Iowa City, Iowa, B-Q-A-, Inc., REQ: 93.9 MHz, No. 230; 100 kW; 780 feet.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-28524 Filed 10-6-78; 8:45 am]

[6712-01-M]

[SS Docket No. 78-305, File Nos. 20310/11-IS-88]

HUB OIL CO.

Memorandum Opinion and Order

Adopted: September 26, 1978.
Released: September 27, 1978.

By the Chief, Safety and Special Radio Services Bureau.

In the matter of Hub Oil Co., Inc., P.O. Box 22, Rochester, N.Y. 14601, for reinstatement of authorizations for Stations KO8427 and KER642 in the special Industrial Radio Service (See also 43 FR 45474, October 2, 1978).

1. The Chief, Safety and Special Radio Services Bureau (the Bureau) has before him the Bureau's Memorandum Opinion and Order (adopted September 20, 1978, and released September 21, 1978) designating the above-captioned applications for evidentiary hearing. That action was taken pursuant to authority delegated in § 0.131(a) and 0.331 of the Commission's Rules.

2. Because of certain conflicts in the Bureau's internal records, facts alleged in the Memorandum Opinion and Order were partially incorrect. This discrepancy came to the Bureau's attention subsequent to adoption of the designation order. For this reason, the Bureau believes that the public interest will be best served by setting aside the designation order on its own motion.

3. Accordingly, *it is ordered*, That pursuant to authority contained in section 1.113(a) of the Commission's Rules, the Memorandum Opinion and Order adopted September 20, 1978, designating the above-captioned applications for evidentiary hearing is set aside.

4. *It is further ordered*, That the above-captioned applications be returned to the processing line.

FEDERAL COMMUNICATIONS COMMISSION,
CARLOS V. ROBERTS,
Chief, Safety and Special Radio Services Bureau.

[FR Doc. 78-28521 Filed 10-6-78; 8:45 am]

[6712-01-M]

LICENSING OF COMMUNICATION FACILITIES TO REAL ESTATE BROKERS

Clarification of Applicable Policies

Over the past 2 years, the Safety and Special Radio Services Bureau has been caused to examine proposals submitted by real estate brokers for radio facilities in the Business Radio Service. This review was prompted originally by requests by applicants for an unusually large number of mobile units. In looking into the matter, the Bureau discovered that most of these applicants planned to provide service to their sales agents and to charge for it. These and other factors taken together led the Bureau to conclude that this usage constitutes sharing which requires compliance with the Commission's Rules governing arrangements of this type.

While case-to-case variations exist, generally the Bureau has found the relationship between real estate brokers and their sales agents is contractual in nature, with agents earning "commissions" only through the consummation of sales of real property listed with brokers. This appears to be an industry-wide practice. The agents are not considered by the industry to be employees. There is usually neither income tax withheld nor payment of workmen's compensation or social security. Further, medical insurance and retirement plans are not ordinarily provided. In light of these factors, a broker's sales agents are, in effect, independent contractors or independent business persons; and, at least in the circumstances just described, the Bureau will treat them as such in licensing systems for their use in the Business Radio Service.

Each case necessarily depends upon the facts central to it. Nevertheless, when the above elements are present, as stated, the arrangements will be deemed to be ones coming within the cooperative use provisions of § 91.6. Where variations in the elements mentioned are present, consideration will be given to the particular facts of the case. However, in instances in which service is to be provided by the broker to persons other than its employees, this should be disclosed, so that the application can be reviewed properly.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-28523 Filed 10-6-78; 8:45 am]

[6712-01-M]

UNAUTHORIZED INTERCEPTION AND USE OF SATELLITE TRANSMISSIONS

The Commission has been made aware that some licencee of domestic satellite earth station facilities may have received and distributed transmissions without authority from the sender.

The intent of this notice is to remind licensees of their affirmative obligation to assure that violations of law and abuses do not occur. Earth station licenses are conditioned on use of the facilities involved only for reception of such material as the permittee has been authorized to receive by its sender. Earth station operation is also subject to Section 605 of the Communications Act which makes it unlawful:

> For a person not authorized by the sender to intercept radio communications and divulge or publish the existence, contents, substance, purport, effect or meaning thereof to any person; or,
>
> For a person not entitled thereto to receive radio communications and use such communication or any part thereof for his own benefit or for the benefit of another who is not entitled thereto.

Material submitted over domestic satellites is not "broadcast" material within the meaning of section 605, and authority for reception and use must be given by the sender. Moreover, section 605 makes it unlawful for anyone to make use of unauthorized interceptions:

> No person having received any intercepted radio communication or having become acquainted with the contents, substance, effect, or meaning of such communication (or any part thereof) shall divulge or publish the * * * contents * * * or use such com-

munication * * * for his own benefit or for the benefit of another not entitled thereto.

Therefore, broadcast stations or cable television systems, and other persons will be in violation of the law if they divulge, publish or use unauthorized intercepted communications.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-28522 Filed 10-6-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Sanyo Electric Co., Ltd. and Tokyo Sanyo Electric Co., Ltd., are granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of Sanyo E&E Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Sanyo Electric Co., Ltd. and Tokyo Sanyo Electric Co., Ltd. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: September 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[Fr Doc. 78-28389 Filed 10-6-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CARTHAGE BANCSHARES, INC.

Formation of Bank Holding Company

Carthage Bancshares, Inc., Carthage, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares (less directors' qualifying shares) of the First National Bank of Carthage, Carthage, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 26, 1978.

Board of Governors of the Federal Reserve System, September 29, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-28377 Filed 10-6-78; 8:45 am]

[6820-27]

GENERAL SERVICES ADMINISTRATION

Office of the Federal Register

NATIONAL FIRE CODES

Proposed Revision of Standards; Request for Proposals

AGENCY: Office of the Federal Register, GSA.

ACTION: Request for proposals.

SUMMARY: The Office of the Federal Register and the National Fire Protection Association (NFPA) request proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by the NFPA to develop standards which Federal agencies in turn use to develop Federal regulations.

DATES: Interested persons may submit proposals on or before the dates listed in the supplementary information.

ADDRESS: Assistant Vice President for Standards, 470 Atlantic Avenue, Boston, Mass. 02210.

FOR FURTHER INFORMATION CONTACT:

Ann Stevens at 202-523-4534.

SUPPLEMENTARY INFORMATION:

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register (OFR) incorporates these standards by reference under 5 U.S.C. 552(a) and 1 CFR part 51.

Interested persons may submit amendments, supported by written data, views, or arguments to the Assistant Vice President for Standards, 470 Atlantic Avenue, Boston, Mass. 02210. Each person who submits a proposal must include his or her name and address, must identify the notice, and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

The NFPA will make copies of the Technical Committee Report available for review at the Office of the Federal Register, 1100 L Street NW., Washington, D.C.

The NFPA requests proposals from the public to amend the following standards:

Committee	Document	Closing date
Air Conditioning	NFPA 90A, Air Conditioning and Ventilating Systems.	July 20, 1979.
	NFPA 90B, Warm Air Heating and Air Conditioning Systems.	Jan. 12, 1979.
Atomic Energy	NFPA 801, Facilities Handling Radioactive Materials.	(Open).
Automatic Sprinklers	NFPA 13, Installation of Sprinkler Systems	July 20, 1979.
	NFPA 13A, Care and Maintenance of Sprinkler Systems.	Do.
	NFPA 13D, Sprinkler Systems for One- and Two-Family Dwellings and Mobile Homes.	Jan. 12, 1979.
Aviation	NFPA 407, Aircraft Fuel Servicing	Do.
	NFPA 410, Safeguarding Aircraft Systems Maintenance Operations (combining existing NFPA 410A, 410B, 410C, 410D, 410E, and 410F).	Do.
	NFPA 421, Aircraft Interior Fire Protection	Do.
Carbon Dioxide	NFPA 12, Carbon Dioxide Extinguishing Systems	Do.
Chemicals and Explosives	NFPA 40, Cellulose Nitrate Motion Picture Film	Do.
	NFPA 44A, Code for the Manufacture, Transportation, and Storage of Fireworks.	Do.
Combustible Metals	NFPA 48, Storage, Handling and Processing of Magnesium.	Do.
	NFPA 481, Production, Processing, Handling, and Storage of Titanium.	Do.
	NFPA 482M, Zirconium	Do.
Dry Chemical Extinguishing Systems.	NFPA 17, Dry Chemical Extinguishing Systems	Do.
Dust Explosion Hazards	NFPA 61A, Manufacturing and Handling Starch	Do.
	NFPA 61C, Prevention of Fire and Dust Explosions in Feed Mills.	(Open).
	NFPA 61D, Prevention of Fire and Dust Explosions in the Milling of Agricultural Commodities for Human Consumption.	Do.
	NFPA 66, Pneumatic Conveying Systems for Handling Feed, Flour, Grain, and Other Agricultural Dusts.	Do.
	NFPA 651, Manufacture of Aluminum or Magnesium Powder.	Do.
	NFPA 655, Prevention of Sulfur Fires and Explosions.	Do.
Electrical Equipment Maintenance	NFPA 70B, Electrical Equipment Maintenance	Jan. 12, 1979.
Electrical Metalworking Machine Tools.	NFPA 79, Electrical Metalworking Machine Tools	Do.
Fire Department Equipment	NFPA 1904, Fire Department Aerial Ladders and Elevating Platforms.	Nov. 1, 1978.
	NFPA 1921, Fire Department Portable Pumping Units.	Do.
	NFPA 19B, Respiratory Protective Equipment for Fire Fighters.	(Open).
Fire Service Training	NFPA 1401, Training Reports and Records	Do.
Fire Prevention Code Committee	NFPA 1, Fire Prevention Code	May 1, 1979.
Firesafety Symbols	Proposed Standards on Firesafety Symbols for Architectural and Engineering Drawings, Risk Analysis Diagrams and Fire Fighting Operations.	Jan. 12, 1979.
Flammable Liquids	NFPA 30, Flammable and Combustible Liquids Code	(Open).
Foam	NFPA 11C, Mobile Foam Apparatus	Jan. 12, 1979.
Foam Water Sprinklers	NFPA 16, Foam Water Sprinkler and Spray Systems	(Open).
Halogenated Fire Extinguishing Systems.	NFPA 12A, Halon 1301 Systems	Jan. 12, 1979.
	NFPA 12B, Halon 1211 Systems	Do.
	NFPA 12C, Halon 2402 Systems	Do.
Health Care Facilities	NFPA 56C, Laboratories in Health-Related Institutions.	(Open).
Household Fire Warning Equipment.	NFPA 74, Standard on Household Fire Warning Equipment.	Jan. 12, 1979.
Libraries, Museums and Historic Buildings.	NFPA 910, Protection of Library Collections from Fire.	Do.
	NFPA 911, Protection of Museum Collections from Fire.	Do.
Loss Prevention Procedures and Practices.	NFPA 27, Organization, Training and Equipment of Private Fire Brigades.	Do.
	NFPA 601, Guard Service in Fire Loss Prevention	Do.
	NFPA 601A, Guard Operations in Fire Loss Prevention.	Do.
Marine	NFPA 302, Motor Craft	Do.
	NFPA 306, Gas Hazards on Vessels to be Repaired	Do.
Mobile Homes and Recreational Vehicles.	NFPA 501C, Recreational Vehicles	Do.
Piers and Wharves	NFPA 87, Piers and Wharves	Dec. 1 1978.
Portable Fire Extinguishers	NFPA 10L, Model Enabling Act for the Sale or Leasing and Servicing of Portable Fire Extinguishers.	Jan 12, 1979.
Record Protection	NFPA 232, Protection of Records	Do.
	NFPA 232AM, Fire Protection for Archives and Record Centers.	Do.
Safety to Life	NFPA 101, Life Safety Code	Jan. 8, 1979.
Standpipes and Outside Protection.	NFPA 14, Installation of Standpipe and Hose Systems.	(Open).

FRED J. EMERY,
Director of the Federal Register.

[FR Doc. 78-28189 Filed 10-6-78; 8:45 am]

[6820-24-M]

Federal Supply Service

LIFE CYCLE COSTING IN GOVERNMENT PROCUREMENT

Research Support to Extend Use; Request for Comments

The Federal Supply Service (FSS) is mounting a research program in response to its mandate to encourage broader use of life cycle costing (LCC) in Government procurement. To this end FSS is undertaking a program to solicit comments from Government agencies and the private sector on those circumstances and products which are suited to LCC application.

Life cycle costing is an acquisition technique that specifically includes other costs of ownership besides the initial purchase price in the product selection process. Examples of additional considerations associated with the ownership of products are operating costs (e.g., energy costs, maintenance/repair costs), service life, and salvage or resale value. LCC strives for the lowest total cost of ownership rather than the lowest bid price.

The research effort will build an LCC data base and lead to an FSS program providing various forms of assistance to enable and encourage expanded use of LCC within GSA and among purchasing units in other Federal, State, and local agencies.

Because of the importance of this issue, interested parties are encouraged to submit comments to: General Services Administration (FCV), Washington, D.C. 20406.

Dated: September 27, 1978.

ROBERT P. GRAHAM,
Commissioner,
Federal Supply Service.

[FR Doc. 78-28348 Filed 10-6-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77P-0158]

LIBBY, MCNEILL & LIBBY, INC.

Canned Peaches Deviating From Identity Standards; Amendment to a Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces that Libby, McNeill & Libby, Inc., has requested and has been issued an amendment of a temporary permit to market test a new style of peaches designated as "chunky." The amendment provides for market testing of an additional 225,000 cases of twenty-four 16-ounce cans of the test product in an expanded area.

DATE: This amended permit is effective October 10, 1978, and shall terminate either on the effective date of an affirmative order ruling on a proposal based on the Libby, McNeill & Libby petition to amend the canned peach standard or 30 days after a negative order ruling on the proposal, whichever the case may be.

FOR FURTHER INFORMATION CONTACT:

F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: A notice was published in the FEDERAL REGISTER of September 17, 1976 (41 FR 40205) of the issuance of the temporary permit to Libby, McNeill & Libby, Inc., in accordance with § 130.17 (21 CFR 130.17). The permit covered limited interstate marketing tests of canned peaches that deviate from the standard of identity prescribed in § 145.170(a) (21 CFR 145.170(a)) in that the peaches are cut into units predominantly greater than ½ inch and less than 1¾ inches in the largest dimension and designated as "chunky" peaches, an optional style not provided for in the standard. The product is packed in heavy syrup and contains artificial peach flavor, both of which are already provided for in the standard. In addition to the name "chunky" peaches, the principal display panel contains the words "in heavy syrup."

Notice of an extension and an amendment to the original permit issued to Libby, McNeill & Libby, Inc., was published in the FEDERAL REGISTER of September 20, 1977 (42 FR 47260). The amendment provided for the market testing of an additional 60,000 cases of twenty-four 16-ounce cans of the test product in an expanded marketing area. In conjunction with this request, Libby filed a petition as required by § 130.17 proposing to amend the standard for canned peaches to provide for the new style of peaches.

The petition which is being considered by the Food and Drug Administration is on file with the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, for review by interested persons. As was announced in the FEDERAL REGISTER of September 20, 1977 (42 FR 47260), all interested persons may participate in the market tests under the same conditions that apply to Libby, McNeill & Libby, Inc., except that the designated area of distribution does not apply to such interested persons. Any interested person who elects to participate in the market test shall notify the Commissioner in writing of that fact, the amount to be distributed, and the area of distribution. Along with such notification, submissions shall include the labeling under which the food is to be distributed.

Libby, McNeill & Libby, Inc., now has requested that the permit be amended to provide for the market testing of an additional 275,000 cases of twenty-four 16-ounce cans of chunky peaches in the States of California, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin and the District of Columbia. The Commissioner of Food and Drugs concludes that it will be in the interest of consumers to amend the temporary permit as requested. This amended permit is effective October 10, 1978.

This permit amendment, as issued to Libby, McNeill & Libby, Inc., and such others who participate in accordance with the provisions set out above, expires either on the effective date of an affirmative order ruling on the petition of Libby, McNeill & Libby, Inc., or 30 days after a negative order ruling on the petition, whichever the case may be.

Dated: October 3, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-28337 Filed 10-6-78; 8:45 am]

[4110-83-M]

Health Resources Administration

NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

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 October 1978:

Name: National Council on Health Planning and Development.
Date and time: October 26, 1978, 10 a.m.
Place: Room 4173, HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201.
Date and time: October 27, 1978, 8:45 a.m.

Place: Room 703A-727A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93-641, (2) the implementation and administration of titles XV and XVI of Pub. L. 93-641, and (3) an evaluation of the implications of new medical technology for the organization, delivery, and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda. On October 26 the Council will discuss the proposed subcommittee charges, priorities and schedule for consideration of issues related to the national guidelines/goals and standards, implementation and administration of titles XV and XVI, and the Council's responsibilities in the area of new medical technology. On October 27 the Council will continue the discussion of proposed subcommittee charges and operations; consideration of goals and standards; and status reports from the Directors of the Bureau of Health Planning and the Bureau of Health Facilities, Financing, Compliance, and Conversion, including an update on legislation and implementation plans.

Anyone requiring information regarding the subject Council should contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7175.

Agenda items are subject to change as priorities dictate.

Dated: September 29, 1978

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-28346 Filed 10-6-78; 8:45 am]

[4110-08—M]

National Institutes of Health

REPORT ON BIOASSAY OF AZINPHOSMETHYL FOR POSSIBLE CARCINOGENICITY

Availability

Azinphosmethyl (CAS 86-50-0) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of technical-grade azinphosmethyl for possible carcinogenicity was conducted by administering the test chemical in feed to Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as an insecticide.

It is concluded that under the conditions of this bioassay, noeplasms of the thyroid and pancreatic islets suggest but do not provide sufficient evidence for the carcinogenicity of azinphosmethyl in male Osborne-Mendel rats. Azinphosmethyl was not shown to be carcinogenic in female Osborne-Mendel rats or in B6C3F1 mice of either sex.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal domestic assistance program No. 13.393, Cancer Cause and Prevention Research.)

Dated: September 28, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-27983 Filed 10-6-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF DDT, TDE, AND P,P'-DDE FOR POSSIBLE CARCINOGENICITY

Availability

DDT, TDE, and p,p'-DDE (CAS 50-29-3) have been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. Bioassays of technical-grade DDT, TDE, and p,p'-DDE for possible carcinogenicity were conducted using Osborne-Mendel rats and B6C3F1 mice. TDE and p,p'-DDE are chemicals related to the insecticide DDT. Each compound was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of these bioassays there was no evidence for the carcinogenicity of DDT in Osborne-Mendel rats or B6C3F1 mice, of TDE in female Osborne-Mendel rats or B6C3F1 mice of either sex, or of p,p'-DDE in Osborne-Mendel rats, although p,p'-DDE was hepatotoxic in Osborne-Mendel rats. The findings suggest a possible carcinogenic effect of TDE in male Osborne-Mendel rats, based on the induction of combined follicular-cell carcinomas and follicular-cell adenomas of the thyroid. Because of the variation of these tumors in control male rats in this study, the evidence does not permit a more conclusive interpretation of these lesions. p,p'-DDE was carcinogenic in B6C3F1 mice, causing hepatocellular carcinomas in both sexes.

Single copies of the report available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal domestic assistance program No. 13.393, Cancer cause and Prevention Research)

Dated: September 28, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-27984 Filed 10-6-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF SULFALLATE FOR POSSIBLE CARCINOGENICITY

Availability

Sulfallate (CAS 95-06-7) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for possible carcinogenicity of sulfallate was conducted using Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as a herbicide for vegetable crops. Sulfallate was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay dietary administration of sulfallate was carcinogenic to Osborne-Mendal rats and to B6C3F1 mice, inducing mammary gland tumors in females of both species, tumors of the forestomach in male rats, and lung tumors in male mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal domestic assistance program No. 13.393, Cancer Cause and Prevention Research)

Dated: September 28, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-27985 Filed 10-6-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

Cancellation of Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the meeting of the National Advisory Council on the Education of Disadvantaged Children scheduled to be held on October 13 and 14, 1978, at 425 13th Street NW., Suite 1012, Washington, D.C., is hereby cancelled.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

Signed at Washington, D.C., on October 4, 1978.

ROBERTA LOVENHEIM,
Executive Director.

[FR Doc. 78-28531 Filed 10-6-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-78-895]

TASK FORCE ON TENANT PARTICIPATION IN THE MANAGEMENT OF LOW-INCOME HOUSING

Meeting

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice is given announcing the seventh meeting date of the task force.

SUMMARY: The Secretary is announcing the seventh meeting and agenda for the Task Force on Tenant Participation in the Management of Low-Income Housing. Meetings are scheduled for October 29 and 30, 1978, and the agenda for the meetings are stated.

DATE OF SEVENTH MEETING: The seventh meeting of the task force is scheduled to be held over a two (2) day period beginning October 29, 1978, at 1 p.m. in the International Inn, located at 10 Thomas Circle NW., Washington, D.C.

ADDRESS: James F. Anderson, Director, Project Management Division, Office of Assisted Housing Management, Room 6248, or Joseph Smith, Director, Consumer Liaison Division, Office of Consumer Affairs, Room 4212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

James F. Anderson, 202-755-6429; Joseph Smith, 202-755-5360; Donald McLain, 202-755-5333.

SUPPLEMENTARY INFORMATION: Meetings of the Task Force on Tenant Participation in the Management of Low-Income Housing have been scheduled for the dates and time indicated above. The first meeting on October 29, will allow public participation in discussing the draft report to the Secretary. The second meeting day, October 30, discussions on the draft report to the Secretary will be limited to the task force members only. For additional information regarding the draft report to the Secretary, you may contact any of the following task force members.

Jesse Gray, Harlem Backstreet Youth, Inc., 348 West 121st Street, New York, N.Y. 10027, 212-749-4500.

Iris Paton, Massachusetts Union Public Housing Tenants, 33 Broad Street, Boston, Mass. 02109, 413-543-1085.

Shirley Wise, 130 Aisquith Street, Apartment 1K, Baltimore, Md. 21202, 301-728-9354.

William Ratzlaff, Executive Director, Housing Authority of Denver, P.O. Box 4226, Santa Fe Drive Station, Denver, Colo. 80204, 303-534-0821.

Dorothy O. Forbes, Executive Director, Housing Authority of Wilmington, P.O. Box 899, Wilmington, N.C. 28401, 919-762-8544.

Bertha Gilkey, 1121 North Seventh Street, Apartment No. 600, St. Louis, Mo. 63106, 314-436-3527.

Copies of the draft report will be available at the ten (10) HUD Regional Offices.

The agenda for the seventh meeting shall include the following:

1. Review report from the Drafting Committee.
2. Task force discussion on draft report to the Secretary.
3. Closing discussion.

The meeting of the task force will be open to the public.

Issued at Washington, D.C., October 2, 1978.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development.

[FR Doc. 78-28354 Filed 10-6-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF OIL AND GAS LEASE SALE NO. 65

Correction

In FR Document 78-27234, appearing on page 44900 in the issue of Friday, September 29, 1978, the following printing errors are hereby corrected:

1. On page 44900, in paragraph 4, *Bonus bidding with a fixed sliding scale royalty,*

(a) In line 10, strike the word "solid" and substitute the word "sold".

(b) In the same paragraph, page 44900, column 3, fifth line from the top: strike "S=2.4" and substitute therefore "S=2.5". Bidders are reminded that this Notice corrects a printing error only. This formula is correctly stated in paragraph 14 on page 44903, where it is repeated as part of an amendment to the Lease Form 3300-1, to be used for tracts offered on a cash bonus basis with a fixed sliding scale royalty. (The "s" in that statement should be capitalized to read "S=2.5".)

(c) On page 44900, column 3, first line of the fourth paragraph, strike the word "quaterly" and substitute the word "quarterly".

2. On page 44904, middle column, Stipulation 5(a), line 4, the word "all" should be inserted between "to" and "other".

3. On page 44905, column 1, paragraph 17, *Suggested bid form,* line 16, strike "percent interest——." and substitute "Percent interest——%."

4. On page 44905, column 2, paragraph 18: *Required bidders statement,* in the fourth line from the top, the article "a" should be inserted between "before" and "notary".

ARNOLD E. PETTY,
Acting Associate Director, Bureau of Land Management.

Approved: October 4, 1978.

HEATHER L. ROSS,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-28545 Filed 10-6-78; 8:45 am]

[1505-01-M]

OUTER CONTINENTAL SHELF LEASE FORM

Revision of Form

Correction

In FR Doc. 78-27511 appearing at page 44893 in the issue of Friday, Sept. 29 make the following corrections.

1. On page 44894, second column, seventh line from the bottom the word, "lessee" should read, "Lessee."

2. On page 44896, first column, the fourteenth and fifteenth lines from the top should read, "this lease are hereby reserved to the Lessor. Without limiting the generality of the fore-"

3. On page 44896, first column, the seventh line from the bottom is corrected to read, "obligations or to abandon all wells on the area".

[4310-09-M]

Bureau of Reclamation

NORTH LOUP DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM, NEBRASKA

Public Hearing on Draft Supplement to the Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft supplement to the final environmental statement FES 72-31 dated September 18, 1972. This supplement (Int. Des. 78-39, dated September 22, 1978) was filed with EPA on September 22, 1978, and made available for public review and comment on September 25, 1978.

The draft supplement provides additional information in the areas of surface and ground water quality, geologic stability of damsites, sedimentation upstream of reservoir sites, flora and fauna of reservoir sites, and a research alternative to project irrigation development.

Public hearings will be held in Ord, Nebr., at the Elks Lodge on North Highway 11 beginning at 9 a.m., on November 9, 1978, to receive views and comments concerning the information presented in the draft supplement. Oral statements at the hearings will be limited to a period of 10 minutes each. Speakers will not be permitted to trade or consolidate the time in order to obtain a longer oral presentation; however, the person authorized to conduct the hearings may allow a speaker to provide additional oral comments after all persons wishing to comment have been heard. Such additional oral comments shall also be limited to 10 minutes each.

Persons wishing to make statements at the hearing will be scheduled upon receipt of their written or telephone request in the order received unless a specific time period is requested. If a speaker requests a specific time period, he will be scheduled to appear as close to the requested time as possible. Any scheduled speaker not present when called will lose his privilege in the scheduled order and his name will be recalled after all other scheduled speakers have been heard.

Organizations or individuals desiring to present statements at the hearings should contact the Lower Missouri Regional Office, Bureau of Reclamation, Building 20, Denver Federal Center, Denver, Colo. 80225, telephone 303-234-3779, by letter or telephone and request to be scheduled for a presentation. Requests for scheduled presentations will be accepted until 4 p.m., on November 6, 1978. Speaking requests received subsequent to that time will be handled on a first-come-first-served basis following the scheduled presentations. Written comments from those unable to attend and from those wishing to supplement their oral presentations will be accepted for the record until 4 p.m., November 20, 1978. Such written comments should be addressed to the Regional Director at the address listed above.

Dated: October 3, 1978.

R. KEITH HIGGINSON,
Commissioner of Reclamation.

[FR Doc. 78-28358 Filed 10-6-78; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before September 29, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by October 20, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALABAMA

Montgomery County

Montgomery, *Jones, Gov. Thomas C., House,* 323 Adams Ave.

HAWAII

Maui County

Wailuku, *Maui Jinsha Mission,* 472 Lipo St.

Oahu County

Haleiwa vicinity, *Kawailoa Ryusenji Temple,* N of Haleiwa at 179-A Kawailoa Dr.

INDIANA

Marion County

Indianapolis, *Mt. Pisgah Luthern Church,* 701 N. Pennsylvania St.

Tippecanoe County

West Lafayette, *West Lafayette Baptist Church,* 123 N. Chauncey St.

IOWA

Cerro Gordo County

Mason City, *Wagner-Mozart Music Hall,* 1st St. NE and Delaware Ave.

Polk County

Des Moines, *Sherman Hill Historic District,* roughly bounded by Woodland Ave., 19th, School, and 15th Sts.

Washington County

Washington, *Keck, Joseph, House,* 504 W. Washington St.

MASSACHUSETTS

Essex County

Lawrence, *Old Public Library,* 190 Hampshire St.

Lynn, *Lovejoy, Charles, House,* 64 Broad St.

Middlesex County

Cambridge, *Charles River Basin Historic District,* both banks of Charles River from Eliot Bridge to Charles River Dam (also in Suffolk County).

Newton, *Echo Bridge,* Ellis St. at Charles River (also in Norfolk County).

Worcester County

Athol, *Pequoig Hotel,* Main St.

MISSISSIPPI

Carroll County

Carrollton, *Carrollton Historic District,* MS 35.

Lafayette County

Oxford, *Barnard Observatory,* University of Mississippi campus.

NEW HAMPSHIRE

Rockingham County

Rye, *Locke, Elijah, House,* 5 Grove Rd.

NEW JERSEY

Atlantic County

Port Republic, *Blake, Amanda, Store,* 104 Main St.

NEW MEXICO

Taos County

Taos, *Luhan, Mabel Dodge, House,* Luhan Lane.

Torrence County

Mountainair, *Shaffer Hotel,* Broadway St.

Mountainair vicinity, *Rancho Bonito,* S. of Mountainair on Gran Quivera Rd.

TENNESSEE

Lauderdale County

Henning, Palmer, *W. E., House (Haley, Alex, House,* off U.S. 51.

VIRGIN ISLANDS

St. Thomas County

Charlotte Amalie, *Militaire Hospital (Alton Adams House)* 1B Kongens Gade.
Charlotte Amalie, *Skytsborg,* 39 Dronningens Gade.
Charlotte Amalie, *von Scholten, Peter, House (Paiewonsky House)* 24 Dronningens Gade.

WASHINGTON

Clark County

Vancouver, *Evergreen Hotel,* 500 Main St.

King County

Seattle, *Arctic Building,* 306 Cherry St.
Seattle, Chelsea Family Hotel, 620 W. Olympic Pl.
Seattle, *Skinner building (Fifth Avenue Theatre,* 1300-1334 5th Ave.

Snohomish County

Everett, *Swalwell Cottage,* 2712 Pine St.
Index, *Bush House,* Index Ave. and 5th St.

Whatcom County

Bellingham, *Aftermath Clubhouse,* 1300 Broadway.
Bellingham, *Mount Baker Theatre,* 106 N. Commercial St.
Bellingham, *Roth, Lottie, Block,* 1106 W. Holly St.

WISCONSIN

Dane County

Madison vicinity, *Lake Farms Archeological District,* S of Madison.

[FR Doc. 78-28145 Filed 10-6-78; 8:45 am]

[4310-70-M]

National Park Service

[INT FES 78-27]

YOUGHIOGHENY WILD AND SCENIC RIVER

Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Youghiogheny Wild and Scenic River in Maryland and Pennsylvania. The statement considers the probable impact of establishing a segment of the Youghiogheny River as a component of the National Wild and Scenic River System. The Notice of Availability inviting comments on the draft statement (DES 78-23) was published in the FEDERAL REGISTER on June 20, 1978.

Copies of the statement are available for inspection at the following locations;

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, Pa. 19106, telephone 215-597-3679.
Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Annapolis, Md. 21302.
Council Chambers, Ohiopyle Muncipal Building, Ohiopyle, Pa. 15470.
Ruth Enlow Library, Friendsville Branch, Maple Street, Friendsville, Md. 21531.
Pennsylvania State Clearinghouse, Governor's Budget Office, Intergovernmental Relations Division, P.O. Box 1323, Harrisburg, Pa. 17120. Uniontown Public Library, 24 Jefferson Street, Uniontown, Pa. 15401.
Springfield Township, Municipal Building, Mill Run, Pa. 15464.
Ruth Enlow Library, 6 North 2nd Street, Oakland, Md. 21550.
Baltimore County Public Library, Cockeysville Branch, 10757 York Road, Cockeysville, Md. 21030

Single copies are available to the public and may be obtained by writing to the Regional Director, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania, 19106. Please refer to the statement number shown in the title.

Dated: October 3, 1978.

LARRY E. MEIEROTTO,
DEPUTY ASSISTANT
Secretary of the Interior.

[FR Doc. 78-28372 Filed 10-6-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-56]

CERTAIN THERMOMETER SHEATH PACKAGES

Notice of Prehearing Conference and Hearing

Notice is hereby given that a Prehearing Conference will be held in connection with the above styled investigation at 10 a.m. on January 11, 1979, in the Hearing Room of the Administrative Law Judge, Room 610 Bicentennial Building, 600 E Street NW., Washington, D.C. No discovery will be obtained susequent to December 22, 1978. On or before January 2, Complainant will have completed service of its Prehearing Conference Statement on the other parties, and Respondents and Commission Investigative Attorney will have completed service of their Prehearing Conference Statements on or before January 8, 1979. The contents of these statements will be the subject of a subsequent order. The purpose of this Prehearing Conference is to review such statements, complete the exchange of exhibits, and resolve any other necessary matters in preparation for the hearing.

Notice is also given that the Hearing in this proceeding will commence at 10 a.m. on January 16, 1979, in the Hearing Room of the Administrative Law Judge, Room 610 Bicentennial Building, 600 E Street NW., Washington, D.C., or at 10 a.m. on a date as soon after as practicable, and will continue daily until completed. Counsel shall be ready to proceed on January 16, 1979, subject to at least 48-hour advance oral notification if the hearing is to commence on a subsequent date.

The Secretary shall serve a copy of this Notice upon all parties of record, and shall publish this Notice in the FEDERAL REGISTER.

Issued: October 3, 1978.

DONALD K. DUVALL,
Presiding Officer.

[FR Doc. 78-28527 Filed 10-6-78; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-37-M]

DELANO GRANITE, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Delano Granite, Inc., 265 North River Street, Delano, Minn. 55328, has filed a petition to modify the application of 30 CFR 56.24-4 (noise) to its Milbank Quarry Mine, located in Albertville County, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) At the present time, burner operators and drillers in the quarry hole at the above mine are exposed to noise levels above those required under the standard.

(2) Burner technology has not progressed to the point of lowering noise levels below the permissible levels contained in the standard.

(3) Petitioner has done and is continuing to do research and development in the area and has applied for a grant to continue research efforts.

(4) To change quarrying techniques would impose a severe hardship on petitioner and would entail an extended mine shutdown.

(5) Affected miners (a total of approximately six) will be issued the best available ear protection and will be rotated in their work duties to cut down the time of exposure.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 9, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration,

4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 2, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28383 Filed 10-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-42-M]

H. E. FLETCHER CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that H. E. Fletcher Co., Groton Road, West Chelmsford, Mass. 01863, has filed a petition to modify the application of 30 CFR 56.16-14(b) (automatic switches on automatic cranes), to its Mill Creek No. 1, 2, and 3 mines, located in Middlesex County, Mass., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) The piece of equipment covered by this petition is a 50-ton, operator-carrying, overhead Bedford crane used in the northwest section of the mill. The crane was purchased over 40 years ago.

(2) The crane was delivered with a wound-rotor AC motor, external resistance and drum controller; automatic bolting of the uptravel of the block, as required by the standard, cannot be accomplished with this system because of the prohibitive cost of retrofitting an old crane.

(3) In lieu of the requirements of the standard, the petitioner proposes to install a red light, which will remain on under normal conditions, in front of the operator. Should the traveling block come within 1 foot of the hoist, the light will go out, so as to warn the operator of the closeness of the hoist and block. The light will also indicate to the operator that the system is operable.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 9, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: September 29, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28385 Filed 10-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-36-M]

INTERNATIONAL SALT CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that International Salt Co., 3846 Retsof Road, Retsof, N.Y. 14539, has filed a petition to modify the application of 30 CFR 57.14-13 (canopies), to its Retsof mine, located in Livingston County, N.Y., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

1. Forklift roof trucks, front-end loaders, and bulldozers are used in the above mine for cleanup work and moving up muck piles in production work.

2. Areas of roof in the above mine are too low to accommodate the above equipment, creating an extreme hazard to the equipment operator.

3. The collision of canopies against roof can cause head and neck injuries.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 9, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 2, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28384 Filed 10-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-32-M]

McKEE QUARRIES CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that McKee Quarries Co., Inc., Box 292, Greenwood, Mo. 64034, has filed a petition to modify the application of 30 CFR 56.9-88 (ROPS), to its McKee quarry and mill, located in Cass County, Mo., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

1. A CAT 950 loader is used to clean out spillage from under the loading bins of petitioner's crusher and to add a roll-bar would not allow sufficient clearance.

2. It is impossible to dig out beneath the loading bins sufficiently to permit clearance of the loader.

3. The loader is operated on flat ground and is operated only by petitioner's vice president.

4. Operation of the loader under such circumstances would not diminish health and safety at the mine.

5. Petitioner therefore requests that a roll-bar be excluded from the loader.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 9, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 2, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28388 Filed 10-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-85-C]

SEWELL COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Sewell Coal Co., General Delivery, Nettie, W. Va. 26681, has filed a petition to modify the application of 30 CFR 75.1710-1 (cabs and canopies), to its Meadow River No. 1 mine, located in Nicholas County, W. Va., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) Because of mining heights at the Meadow River No. 1 mine from 36 to 54 inches, with abrupt changes in seam heights and undulations in mine floor, petitioner asserts that installation of canopies will result in dimunition of safety to the miners. Additionally, mining equipment in this mine range in heights from 22 to 32 inches.

(2) Due to the undulations in seam heights, the likelihood of jamming the canopy against the roof is increased. Roof bolts have been and will continue to be dislodged, thereby creating a greater risk of roof fall and injury to employees than would otherwise exist.

(3) Installing canopies over the equipment would result in cramped conditions, causing operators to leave the equipment more frequently, thus exposing them to hazards of moving equipment.

(4) Variations in seam heights cause inadequate equipment clearance, damages to crossbeams, and destroys equipment.

(5) The existence of the cab itself becomes a hazard because present equipment known to petitioner limits the paths of escape of an operator involved in a roof or rib fall.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 9, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: September 29, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28387 Filed 10-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-41]

WAVE MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Wave Mining Co., Route 2, Box 177, Whitesburg, Ky. 41858, has filed a petition to modify the application of 30 CFR 75.1710-1 (cabs and canopies), to its No. 1 mine, located in Letcher County, Ky., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) This petition pertains to the Joy Loader, Model No. 1-14-BN-10-11CH, which is used at the above mine.

(2) The above Joy Loader is 42 inches in height.

(3) Mining heights at the Hazard No. 4 seam of the No. 1 mine range from 50 to 58 inches. The seam is of ascending and descending grades, resulting in dips in the coalbed.

(4) A canopy on the Joy Loader would result a diminution of the safety to the miners because it will reduce operator visibility, creating a hazard to them as well as to others in the mine.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 9, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: September 29, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28386 Filed 10-6-78; 8:45 am]

[4510-28-M]

Office of the Secretary

BICYCLE TIRES AND TUBES

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

On September 1, 1978, the International Trade Commission (ITC) determined that increased imports of bicycle tires and tubes are a substantial couse of serious injury, or the threat thereof, to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (43 FR 40067).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The Department of Labor has concluded its report on bicycle tires and tubes. The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the Department of Labor has received two petitions for certification of eligibility for adjustment assistance from workers engaged in the production of bicycle tires and tubes. The Department certified both cases. As of May 31, 1978, 360 workers in plants producing bicycle tires and tubes had received $590,245 in the form of trade readjustment allowances.

2. Employment of workers producing bicycle tires and tubes has fluctuated, but experienced an overall decline from 1973 through 1977. Employment was slightly higher in the first quarter of 1978 compared to the same quarter of 1977. However, additional reductions in employment are likely. Most separated workers should be eligible for trade adjustment assistance.

3. The unemployment rate in the one area with a bicycle tire and tube plant was below the national average of 5.5 percent (not seasonally adjusted) for May 1978. Labor market conditions for this area, located in the State of Pennsylvania, are unfavorable for those occupations typical of bicycle tires and tubes production and reemployment prospects appear to be at best fair.

4. The age distribution for workers in the bicycle tires and tubes industry indicates that these workers are older than clients targeted by the local CETA sponsor and are not likely to be eligible for CETA training programs. For displaced trade impacted workers not covered by CETA programs, the U.S. Department of Labor has the authority to purchase specific training.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, phone 202-523-7665.

Signed at Washington, D.C., this 27th day of September 1978.

HOWARD D. SAMUEL,
Deputy Under Secretary, International Affairs.

[FR Doc. 78-28496 Filed 10-6-78; 8:45 am]

[4510-28-M]

HIGH-CARBON FERROCHROMIUM

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

On September 5, 1978, the International Trade Commission (ITC) determined that increased imports of "High-Carbon Ferrochromium" are a substantial cause of serious injury to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (43 FR 40555).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The Department of Labor has concluded its report on "High-Carbon Ferrochromium". The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the De-

partment of Labor has received five petitions for certification of eligibility for adjustment assistance from workers engaged in the production of high-carbon ferrochromium. The Department has certified four cases and denied one. As of June 30, 1978 the Department had paid out $945,003 in trade readjustment allowances to 370 workers at plants producing high-carbon ferrochromium. In addition to the readjustment allowances the Department has paid out $2,858 in relocation allowances and $655 in job search allowances to certified workers in the industry. The total number of workers entering training through June 30, 1978 was eleven.

2. Employment of workers producing high-carbon ferrochromium declined in 1977 and the first half of 1978. High-carbon ferrochromium employment is not likely to show substantial improvement in the near future. Additional declines in high-carbon ferrochromium employment may occur in the second half of 1979.

3. Unemployment rates in three of the four areas with high-carbon ferrochromium plants were below the national unemployment rate of 6.2 percent unadjusted for June 1978. Some additional decline in industry employment may occur, so that the relatively lower local unemployment rates and somewhat improving local labor market conditions make reemployment prospects only fair.

4. The Comprehensive Employment and Training Act (CETA) programs appear to have sufficient funds and slots to meet the training needs of most of the displaced workers. However, the age distribution and economic position of a substantial portion of the workers in the high-carbon ferrochromium industry differ from the characteristics of the clients for CETA sponsors for impacted areas. These differences may limit the training opportunities of some displaced workers in the high-carbon ferrochromium industry. For displaced workers not covered by CETA programs the Department has the authority to purchase specific training.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, phone 202-523-7665.

Signed at Washington, D.C., this 27th day of September 1978.

HOWARD D. SAMUEL,
Deputy Under Secretary, International Affairs.

[FR Doc. 78-28497 Filed 10-6-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigation may request a public hearing: *Provided*, Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 20, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 21st day of September 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Galeton Production Co. (company)	Galeton, Pa.	Sept. 21, 1978	Sept. 19, 1978	TA-W-4,203	Electronic receiving, tubes.
Gramercy Mills, Inc. (ILGWU)	Passaic, N.J	Sept. 18, 1978	Aug. 31, 1978	TA-W-4,204	Girl's bathing suits.
Jacoby-Bender, Inc. (Watch & Jewelry Workers Union).	Woodside N.Y	Sept. 19, 1978	Sept. 14, 1978	TA-W-4,205	Metal watchbands and metal jewelry.
Kaiser Steel Corp. (workers)	Eagle Mountain, Calif	Sept. 18, 1978	Sept. 13, 1978	TA-W-4,206	Mining and concentrating of iron ore.
T & S Apparel (ILGWU)	Passaic, N.J	do	Aug. 31, 1978	TA-W-4,207	Contractor of women's sportswear.

[FR Doc. 78-28380 Filed 10-6-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing. *Provided*, Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 20, 1978.

Interested persons are invited to summit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address

shown below, not later than October 20, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 26th day of September 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Apex Leather Manufacturing Co. (company).	Englewood, N.J.	Sept. 25, 1978	Sept. 18, 1978	TA-W-4,208	Schoolbags, briefcases, totebags, etc.
Corporacion Azucarera de Puerto Rico, Taller Las Claras (company).	Plazuela-Cambalache, P.R	do	Sept. 21, 1978	TA-W-4,209	Service is provided for machinery repair that is used in the sugarcane farm.
Corporacion Azucarera de Puerto Rico, Taller Central (company).	Toa-San Vicente, P.R.	do	do	TA-W-4,210	Do.
Corporacion Azucarera de Puerto Rico, Administrative Office (company).	do	do	do	TA-W-4,211	Sugarcane.
Corporacion Azucarera de Puerto Rico, Taller Dolores (company).	Loiza, P.R	do	do	TA-W-4,212	Service is provided for machinery repair that is used in the sugarcane farm.
GAF Corp. (workers)	Rockville, Conn	Sept. 22, 1978	Sept. 20, 1978	TA-W-4,213	Papermakers felt.
Johnson Outboard Co. (workers)	Waukgan, Ill	Sept. 21, 1978	Sept. 10, 1978	TA-W-4,214	Outboard engines.
Outboard Marine Corp., Gale Products Division (workers).	Galesburg, Ill	do	do	TA-W-4,215	Lawnmowers, supply electrical components for outboard engines.
Waldon Manufacturing Co. (ACTWU)	Walnut, Miss	Sept. 22, 1978	Sept. 21, 1978	TA-W-4,216	Men's trousers.
Windon Manufacturing Co. (ACTWU)	Winona, Miss	do	do	TA-W-4,217	Men's sport shirts.

[FR Doc. 78-28381 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3715]

AMERICAN STAY CO., INC., MELROSE, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3715: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 16, 1978 in response to a worker petition received on April 24, 1978 which was filed on behalf of workers and former workers producing shoe trimmings at the Melrose, Massachusetts plant of the American Stay Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on June 27, 1978. (43 FR 27923-24). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the American Stay Co., industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The American Stay Co., Inc., Melrose, Mass. was formed as a Massachusetts Corporation in 1969. Workers at the firm produced shoe trimmings, until the company shutdown in 1978. While in operation, American Stay was an independent firm with no corporate affiliation with any shoe manufacturer.

Evidence developed in the Department's investigation revealed that there are no separately identifiable imports of shoe trimmings. The product is not listed as a separate item of any U.S. Tariff Schedule grouping. In addition, industry spokesmen indicated that imports of shoe trimmings have been negligible in the 1970's

Imports of shoes, which incorporate shoe trimmings in the final product, are not like or directly competitive with shoe trimmings produced by workers at the American Stay Co., Inc. within the meaning of section 222(3) of the Trade Act of 1974.

CONCLUSION

After careful review, I determine that all workers at the American Stay Co., Inc., Melrose, Mass. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28390 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3878]

A.M. MILWAUKEE BODY EMPLOYEES CREDIT UNION, MILWAUKEE, WISC.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3878: Investigation regarding certification of elibibility to apply for worker adjustment assistance as prescribed in secton 222 of the Act.

The investigation was initiated on June 22, 1978 in response to a worker petition received on June 19, 1978, which was filed on behalf of workers and former workers providing credit union services to the employees of the Milwaukee plant of AMC at the A.M. Milwaukee Body Employees Credit Union.

The Notice of Investigation was published in the FEDERAL REGISTER on June 30, 1978 (43 FR 28579). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the A.M. Milwaukee Body Employees Credit Union and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the act and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that the A.M. Milwaukee Body Employees Credit Union was founded in 1933 in Wisconsin, for the purpose of providing savings and loan services to the employees of the Milwaukee, Wisconsin body plant of American Motors Corp. Members of the Credit Union must be employees of the body plant.

The Credit Union occupies office space owned by AMC. The equipment used is owned by the Credit Union. There is no corporate affiliation between the Credit Union and AMC. Neither the Credit Union nor AMC have any controlling interest in each other.

The Credit Union provides saving and loan services to employees of the Milwaukee, Wisconsin body plant of AMC. Workers in the A.M. Milwaukee Body Employees credit Union are engaged in providing such services and do not produce an "article" within the meaning of section 222 (3) of the act.

Workers on whose behalf this petition was filed are employed by A.M. Milwaukee Body Employees Credit Union. All personnel actions and payroll transactions are controlled by the Credit Union. Workers are not at any time under the supervision or control of American Motors Corp. Thus, A.M. Milwaukee Body Employees Credit Union must be considered the "workers' firm."

CONCLUSION

After careful review, I determine that all workers at the A.M. Milwaukee Body Employees Credit Union, Milwaukee, Wis. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Adminstration and Planning.

[FR Doc. 78-28391 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3763]

ATRAX CEMENTED CARBIDE, WEST MIFFLIN, PA.

Negative Determination Regarding Eligibility to Apply for Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3763: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 24, 1978 in response to a worker petition received on May 19, 1978 which was filed by the United Steel Workers of America on behalf of workers and former workers producing cemented tungstun carbides at Atrax Cemented Carbide, West Mifflin, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on June 6, 1978 (43 FR 24634-35). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Atrax Cemented Carbide, its customers, the United Steel Workers of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certificate of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the criteria have been met, the following criterion has not been met:

That increased of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that workers at Atrax Cemented Carbide produced cemented carbides used as cutting tools and mining inserts.

A survey of major customers of Atrax Cemented Carbide evinced that those customers do not purchase imported cemented carbide cutting tools or mining inserts.

CONCLUSION

After careful review, I determine that all workers of Atrax Cemented Carbide, West Mifflin, Pa., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28392 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3824]

BARRINGER KNITTING MILLS, INC., PHILADELPHIA, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3824: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 12, 1978, in response to a worker petition received on June 7, 1978, which was filed on behalf of workers and former workers producing ladies junior's and misses' knitted sweaters at Barringer Knitting Mills, Inc., Philadelphia, Pa.

This notice of investigation was published in the FEDERAL REGISTER on June 27, 1978 (42 FR 27925). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Barringer Knitting Mills, Inc., the International Ladies Garment Workers Union, Knit Good Workers Union, Local 190, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated

The Department's investigation revealed that the average number of production workers employed at Barringer Knitting Mills, Inc., increased in each successive quarter of each year beginning with the second quarter of 1976 and continued successive quarterly increases for the year 1977 and 1978.

CONCLUSION

After careful review I determine that all workers at Barringer Knitting Mills, Inc., Philadelphia, Pa., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28393 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3584]

BARON FASHIONS, INC., PATERSON, N.J.

Certification Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3584: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978,

which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' woolen full length coats at Baron Fashions, Inc., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Baron Fashions, Inc., its customers, the U.S. Department of Commerce, U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation has revealed that all the criteria have been met.

U.S. imports of women's, misses, and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The sole customer of Baron Fashions, Paterson, N.J., increased purchases of imported ladies' coats between 1976 and 1977 and in the first 5 months of 1978 as compared to the same period of the previous year. This customer reduced orders with Baron Fashions during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' woolen full length coats produced by Baron Fashions, Paterson, N.J., contributed importantly to the decline in sales and production and to the separation of workers at that firm. In accordance with the provisions of the Act. I make the following certification:

All workers of Baron Fashions, Paterson, N.J., who became totally or partially separated from employment on or after October 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28394 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3647]

BERNARDI FASHIONS, INC., JERSEY CITY, N.J.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' fake fur coats and some cloth coats at Bernardi Fashions, Inc., Jersey City, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

Due to the short term of operation of Bernardi Fashions and to the seasonality of the ladies' coat industry, there is not sufficient information in this case upon which to base a determination. In addition, worker qualifying requirements in section 231 of the Act may not be met at this time. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 3d day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-28395 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-4123]

BETHLEHEM STEEL CORP., VERNON, CALIF.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 31, 1978, in response to a worker petition received on August 14, 1978, on behalf of workers and former workers producing industrial fasteners, wire, and wire products at the Vernon, Calif., plant of Bethlehem Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on September 12, 1978 (43 FR 40576). No public hearing was requested and none was held.

Workers engaged in employment related to the production of industrial fasteners, wire, and wire products at the Vernon, Calif., plant of Bethlehem Steel Corp. were certified eligible to apply for adjustment assistance on August 19, 1977 (TA-W-1498). That certification applied only to workers separated on or after (impact date) November 15, 1975. Workers separated earlier than the impact date are denied.

Section 223(b) of the Trade Act of 1974 states that a certification under this section may not apply to any workers whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than 1 year prior to the date of the petition.

The petitioning workers cite their date of separation as May 5, 1975. The date of the petition in this case is August 9, 1978, and thus, workers terminated prior to August 9, 1977, are not eligible for program benefits under title II, chapter 2, subchapter B of the Trade Act of 1974. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 2d day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

FR Doc. 78-28396 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA—W—3552]

BO-MAR FASHIONS, INC., PISCES FASHIONS, INC., AND MARI-BAR FASHIONS, INC., DEER PARK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3552: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 27, 1978, in response to a worker petition received on April 17, 1978, which was filed on behalf of workers and former workers producing ladies' rainwear at Bo-Mar Fashions, Inc., New York, N.Y. The Department's investigation disclosed that the workers at Bo-Mar Fashions, Inc., produce ladies' all-weather coats and winter coats.

The notice of investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bo-Mar Fashions, Inc., Pisces Fashions, Inc., and Mari-Bar Fashions, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility

requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 1,517 thousand dozen in 1975 to 2,252 dozen in 1976 to 2,723 dozen in 1977. U.S. imports decreased to 572 thousand dozen in the first quarter of 1978 from 590 thousand dozen in the first quarter of 1977. The ratio of imports to domestic production increased from 38.9 percent in 1975 to 48.3 percent in 1976 to 54.9 percent in 1977.

Bo-Mar Fashions, Inc., the name on the worker's petition, is the original name of a company known over the past 3 years as Bo-Mar Fashions, Inc., the Pisces Fashions, Inc., and finally Mari-Bar Fashions, Inc.

Customers representing a significant proportion of Bo-Mar Fashions, Inc.'s 1977 sales decreased their purchases from the subject firm and increased their import purchases in the first half of 1978 compared to the first half of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the ladies' coats produced at Bo-Mar Fashions, Inc., Pisces Fashions, Inc., and Mari-Bar Fashions, Inc., contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Bo-Mar Fashions, Inc., Pisces Fashions, Inc., and Mari-Bar Fashions, Inc., Deer Park, N.Y., who became totally or partially separated from employment on or after December 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-28397 Filed 10-6-78; 8:45]

[4510-28-M]

[TA-W-3521]

BRAWER BROS., INC., EMPIRE DYEING DIVISION, HALEDON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3521: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescirbed in section 222 of the Act.

The investigation was initiated on April 18, 1978, in response to a worker petition received on April 10, 1978 which was filed by the Amalgamated Clothing & Textile Workers' Union on behalf of workers and former workers producing dye and print yarn used for cloth, rugs, and tapestry, etc., at Brawer Brothers, Inc., Empire Dyeing Division, Haledon, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 2, 1978. (43 FR 18789-90). No public hearing was requested and none was held.

The information unpon which the determination was made was obtained principally from officials of Brawer Bros., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of all yarns (spun and texturized) increased from 117,000,000 pounds in 1975 to 163,900,000 pounds in 1976, and increased to 187,700,000 pounds in 1977. Imports increased to 63,300,000 pounds during the first quarter of 1978 compared to 37,400,000 pounds during the same period in 1977. The ratio of imports to domestic production increased from 1.3 percent in 1975 to 1.6 percent in 1976 and increased from 1.6 percent in 1976 to 1.7 percent in 1977.

Customers who were surveyed indicated that they did not increase purchases of imported dyed yarn and decrease purchases of dyed yarn from the subject firm.

CONCLUSION

After careful review, I determine that all workers of Brawer Brothers, Inc., Empire Dyeing Division, are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-28398 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-2898]

BURLINGTON DRESS CO., ATLANTIC CITY AND BURLINGTON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2898: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 11, 1978, in response to a worker petition received on December 27, 1977, which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing ladies' Dresses and sportswear at the Burlington, N.J., plant of Burlington Dress Co. The investigation was expanded to include workers and former workers producing ladies' dresses and sportswear at the Atlantic City, N.J., plant of Burlington Dress Co.

The notice of investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Burlington DSress Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that U.S. imports of women's and misses' dresses increased from 645 thousand dozen in 1975 to 659 thousand dozen in 1976. The ratio of imports to domestic production remained unchanged at 4.5 percent in 1975 and 1976. Imports decreased from 659 thousand dozen in 1976 to 587 thousand dozen in 1977, a decline of 10.9 percent.

A survey of clothing manufacturers who provided contract work to Burlington Dress Co. indicated that the

manufacturers did not use foreign contract firms and did not purchase imports of finished ladies' dresses and sportswear. A secondary survey of retail stores who purchased ladies' dresses from the clothing manufacturers revealed that the retail stores either increased purchases from the clothing manufacturers or did not import any dresses in 1976 and 1977.

CONCLUSION

After careful review I determine that all workers of the Atlantic City and Burlington, N.J., plants of Burlington Dress Co. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-28399 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-329]

BUTTON CORP. OF AMERICA, NEWARK, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3291: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 2, 1978, in response to a worker petition received on January 19, 1978, which was filed on behalf of workers formerly producing buttons at Button Corp. of America, Newark, N.J.

The notice of investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11276). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Button Corp. of America, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of plastic buttons (casein, urea resin, polyester, and acrylic) decreased from 5,870 thousand gross in 1975 to 4,212 thousand gross in 1976 and then increased to 7,227 thousand gross in 1977.

A Department survey of customers of Button Corp. of America revealed that major customers increased their purchases of imported buttons in each year from 1975 to 1977 and decreased their purchases from Button Corp. of America during this period of time.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with buttons produced by Button Corp. of America, Newark, N.J., contributed importantly to the decline in sales and production and to the total or partial separation of workers at the plant. In accordance with the provisions of the act, I make the following certification:

All workers at Button Corp. of America of Newark, N.J., who became totally or partially separated from employment on or after January 9, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28400 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3463]

CADBURY CORP, HAZELTON, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3463: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 27, 1978, in response to a worker petition received on April 4, 1978, which was filed by the Amalgamated Food Employees Union on behalf of workers and former workers producing solid chocolate candy bars at Cadbury Corp., Hazelton, Pa. During the course of the investigation it was determined that the petition was intended only to include workers producing cocoa crumb at the plant.

The notice of investigation was published in the FEDERAL REGISTER on April 28, 1978 (43 FR 18360-61). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Cadbury Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, U.S. Department of Agriculture, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the of act must be met. The investigation has revealed that all of the requirements have been met.

Cadbury Corp., Hazelton, Pa., produces and imports cocoa crumb for use in its own production of chocolate candy bars.

U.S. imports of cocoa crumb increased from 4,409,000 pounds in 1975 to 11,850,000 pounds in 1976, and decreased to 9,242,000 pounds in 1977. The 1977 level of imports is 73 percent greater than average imports from 1973 through 1975.

Company imports of cocoa crumb increased in 1976 compared to 1975, decreased in 1977 compared to 1976, and increased in the first 6 months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases of imports of articles like or directly competitive with cocoa crumb produced at Cadbury Corp., Hazelton, Pa., contributed importantly to the decline in sales or production and to the total or partial separation of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers of Cadbury Corp., Hazelton, Pa., engaged in employment related to the production of cocoa crumb who became totally or partially separated from employment on or after March 27, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28401 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-4003]

CARNEY BROS. AUTOMOTIVE, ELY, NEV.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4003: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 31, 1978, in response to a worker

petition received on July 24, 1978, which was filed on behalf of workers and former workers engaged in general automotive repair at Carney Bros. Automotive, Ely, Nev.

The notice of investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130-35131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Carney Bros. Automotive and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The Department has determined that services are not articles within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Carney Bros. Automotive was founded in 1974 and incorporated in Nevada. The firm is independently owned and operated and has no corporate affiliation with any other company.

Carney Bros. Automotive operates from a rented facility in Ely, Nev. The firm owns all of its equipment. Carney Bros. Automotive provides automotive repair services to the general public and to businesses. Workers at Carney Bros. are engaged in providing such repair services and do not produce an article within the meaning of section 222(3) of the Act.

Carney Bros. Automotive and its customers have no controlling interest in each other.

The workers on whose behalf this petition was filed are employed by Carney Bros. Automotive. All personnel actions and payroll transactions are controlled by Carney Bros. Automotive. All employee benefits are provided and maintained by the subject firm. Workers are not, at any time, under employment or supervision by customers of Carney Bros. Thus, Carney Bros. Automotive must be considered "the workers' firm."

CONCLUSION

After careful review, I determine that all workers of Carney Bros. Automotive, Ely, Nev., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-28402 Filed 10-6-78; 8:45 am]

[4516-28-M]

[TA-W-3633]

CAROLE LYNN COATS, INC., PASSAIC, N.J.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing children's winter coats at Carole Lynn Coats, Inc., Passaic, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

Due to the short term of operation of Carole Lynn Coats and to the seasonality of the ladies' coat industry, there is not sufficient information in this case upon which to base a determination. In addition, worker qualifying requirements in section 231 of the Act may not be met at this time. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 3d day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-28403 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3535 and 3536]

CHICAGO BRIDGE & IRON CO., BIRMINGHAM, AND CORDOVA, ALA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3535 and 3536: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 25, 1978, in response to a worker petition received on April 12, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing fabricated steel plate at the Birmingham and Cordova, Ala., plants of Chicago Bridge & Iron Co. The investigation revealed that process vessels, containment vessels for nuclear reactors, and storage tanks are produced. The company also erects tanks in the field.

The notice of investigation was published in the FEDERAL REGISTER on May 5, 1978 (43 FR 19478). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Chicago Bridge & Iron Co., the Steel Plate Fabricators Association, the Steel Tank Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of metal tanks and vessels decreased absolutely from $14.5 million in 1976 and to $8.6 million in 1977. The ratio of imports to domestic shipments decreased from 0.67 percent in 1976 to 0.29 percent in 1977. The ratio of imports to domestic shipments have consistently been less than 1.0 percent each year from 1973 through 1977. Imports of field-erected tanks are also negligible.

CONCLUSION

After careful review, I determine that all workers of the Birmingham and Cordova, Ala., Plants of Chicago Bridge & Iron Co., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28404 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3379]

CLINTON MILLS OF GENEVA, INC., (FORMERLY GENEVA MILL DIVISION AND J & M MILL DIVISION OF FABRICS AMERICA, INC.) GENEVA, ALA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3379: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 21, 1978 in response to a worker petition received on March 3, 1978, which was filed on behalf of workers and former workers producing cloth from raw cotton at Clinton Mills of Geneva, Geneva, Ala. During the course of the investigation it was determined that the J & M Mill Division and the Geneva Mill Division of Fabrics America which produced industrial weight cotton fabric were sold in July 1977 and now comprise Clinton Mills of Geneva, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 28, 1978 (43 FR 12967). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Clinton Mills of Geneva, Inc., Fabrics America, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that U.S. imports of gray woven industrial cotton fabric decreased from 332 million square yards in 1976 to 209 million square yards in 1977. The ratio of imports to domestic production decreased from 25.8 percent in the first nine months of 1976 to 20.2 percent in the same period of 1977. In the first quarter of 1978 imports increased to 69 million square yards compared to 49 million square yards in the same period of 1977.

A survey of several customers of the Geneva plant revealed very little importing of sheetings.

Customers of the J & M Mill indicated substantial import competition, but workers at that plant were laid off prior to February 28, 1977, the earliest possible impact date.

CONCLUSION

After careful review I determine that workers at Clinton Mills of Geneva, Incorporated (Geneva Mill Division and J & M Mill Division of Fabrics America, Incorporated) Geneva, Ala., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28405 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3919]

COLONIAL CRAFTSMEN PEWTER WORKSHOP, CAPE MAY, NEW JERSEY

Negative Determination regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3919: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on June 29, 1978 in response to a worker petition received on June 28, 1978 which was filed on behalf of all workers engaged in employment related to the production of pewter and wooden artifacts at the Colonial Craftsmen Pewter Workshop in Cape May, N.J. The investigation revealed that the company primarily produced pewter articles.

The Notice of Investigation was published in the FEDERAL REGISTER on July 11, 1978 (43 FR 29851). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Colonial Craftsmen Pewter Workshop, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

Imports of pewter miniatures are negligible and are not separately identifiable in the official trade statistics. Industry sources have stated that there are few foreign firms producing pewter miniatures. Representatives of major domestic manufacturers stated in a survey conducted by the Department that imports of pewter miniatures are negligible and are not adversely affecting the domestic industry.

CONCLUSION

After careful review I determine that all employees of the Colonial Craftsmen Pewter Workshop, Cape may, N.J. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-28406 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3477]

COPA COATS, INC., LINDENHURST, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3477: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on April 6, 1978 in response to a worker petition received on March 27, 1978 which was filed on behalf of workers and former workers producing ladies' coats at Copa Coats, Inc., Lindenhurst, N.Y. The Department's investigation revealed that Copa Coats also produced ladies' raincoats and jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17550). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Copa Coats, Inc., its customers, customers of

its manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council, industry analysts and Department files.

In order to make an affirmative determination and issue a certificate of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation revealed that all of the criteria have been met.

Imports of women's misses', and children's raincoats increased from 191,000 dozen in 1975 to 261,000 dozen in 1976, and declined to 242,000 dozen in 1977. Imports increased from 84,000 dozen in the first quarter of 1977 to 129,000 dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 36.8 percent in 1975 to 45.0 percent in 1976 and then declined to 40.3 percent in 1977.

Imports of women's, misses', and children's coats and jackets increased from 1,517,000 dozen in 1975 to 2,252,000 dozen in 1976 and 2,723,000 dozen in 1977.

The ratio of imports to domestic production increased from 38.9 percent in 1975 to 48.3 percent in 1976 and 54.9 percent in 1977.

Sales by the manufacturer for which Copa Coats produced a major portion of its garments declined in 1977 from 1976. A major customer of that manufacturer who was surveyed increased purchases of imports in 1977 from 1976 while reducing purchases from that manufacturer.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' raincoats, coats and jackets produced by Copa Coats, Inc. contributed importantly to declines in sales and production and to the total or partial separation of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers of Copa Coats, Inc., Lindenhurst, N.Y., who became totally or partially separated from employment on or after September 18, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28407 Filed 10-6-78; 8:45 am]
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[4510-28-M]

[TA-W-3274]

DALE BROOK FINISHING CO., HOHOKUS, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3274: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 1, 1978, in response to a worker petition received on February 21, 1978 which was filed on behalf of workers and former workers finishing greige goods for the production of interlining material at the Dale Brook Finishing Co., Hohokus, N.J.

The Department's investigation revealed that workers at the Dale Brook Finishing Co. dyed greige goods and coated finished fabric with thermal plastic compounds to produce interlining material.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978. (43 FR 10649). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of DHJ Industries, Inc., its customers, the National Cotton Council, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation of several commission weavers, printers, dyers and converters examined the allegations that increased imports of apparel adversely affected production and employment in these industries.

However, imported wearing apparel cannot be considered to be like or directly competitive with finished or unfinished fabric. Imports of fabric must be considered in determining import injury to workers producing printed or finished fabric.

Imports of finished fabric, in absolute terms, increased from 1975 to 1976, decreased from 1976 to 1977 and increased in the first three months of 1978 compared to the first three months of 1977. The ratios of imports to domestic production and consumption increased from 1.8 percent and 1.8 percent, respectively in 1976 to 1.9 percent and 1.9 percent, respectively in 1977. The ratios remained below 2 percent during the period from 1975 to 1977.

The Department's survey of customers who purchased interlining material (finished fabric) from Dale Brook revealed that they did not decrease their purchases from the subject firm and increase their purchases from foreign sources during the 1975-1977 period.

The termination of production and all production-related employment at Dale Brook in March 1978 is attributable to a corporate decision to transfer interlining material production from Dale Brook to another corporate production facility.

CONCLUSION

After careful review, I determine that all workers at Dale Brook Finishing Company, Hohokus, N.J. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[Fr Doc. 78-28408 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3492]

DARLING AND CO., BONE GLUE DEPARTMENT, CHICAGO, ILL.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3492: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 11, 1978, in response to a worker petition received on April 3, 1978 which was filed by the Amalgamated Meat Cutters and Butcher Workmen of North America on behalf of workers and former workers producing bone glue in the Bone Glue Department of the Chicago, Illinois plant of Darling and Co.

This notice of investigation was published in the FEDERAL REGISTER on May 2, 1978 (43 FR 18790-91). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Darling and Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, U.S. industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligility requirements of section 222 of the act must be met. The investigation has revealed that all of the criteria have been met.

The ratio of U.S. imports of animal glue (including bone and hide glue) to domestic production amounted to 46.9 percent in quantity in 1975, 90.7 percent in 1976, and 233.3 percent in 1977. Imports of animal glue increased in quantity during January-March 1978 compared to January-March 1977.

In July 1977 the U.S. Department of the Treasury notified the U.S. International Trade Commission that animal glue and inedible gelatin are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921. In October 1977 the Commission determined by divided votes that the animal glue industry in the United States is being, or is likely to be, injured by reason of the importation of animal glue and inedible gelatin sold at less than fair value.

The investigation by the Commission revealed that nearly all sales of less than fair value animal glue were made at prices below those for domestic animal glue of comparable grade. The reduction of U.S. producers' prices to meet competition from less than fair value imports resulted in a substantial reduction in U.S. producers' profits on animal glue operations.

Sales, production and employment in the bone Glue Department of the Chicago, Ill. plant of Darling and Co. declined in 1977 from 1976. Darling and Co. discontinued production of bone glue in April 1977.

A customer survey conducted by the Department indicated that major customers who decreased purchases of bone glue from Darling and Co. in 1977 increased purchases of imported bone glue during the same period. Purchases of imported bone glue by Darling and Co. increased in 1977 from 1976.

CONCLUSION

After careful review, I determine that increases of imports of articles like or directly competitive with bone glue produced at the Bone Glue Department of the Chicago, Ill. plant of Darling and Co. contributed importantly to the decline in sales and production and to total or partial separation of workers of that department. In accordance with the provisions of the act, I make the following certification:

All workers of the Bone Glue Department of the Chicago, Illinois plant of Darling and Co. who become totally or partially separated from employment on or after March 16, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28409 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3098]

DAVENSHIRE, INC., DAVENPORT, IOWA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3098: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 9, 1978 in response to a worker petition received on January 27, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union, AFL-CIO on behalf of workers and former workers producing women's slacks and shorts at Davenshire, Incorporated, Davenport, Iowa. The investigation revealed that jeans are not produced as alleged in the petition.

This notice of investigation was published in the FEDERAL REGISTER on February 24, 1978 (43 FR 7743). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Davenshire, Incorporated, its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

IN order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the of act must be met. It is concluded that all of the requirements have been met.

United States imports of women's, misses' and children's slacks and shorts increased from 10,067 thousand dozens in 1975 to 11,040 thousand dozens in 1976, and further increased to 11,622 thousand dozens in 1977. Imports also increased relative to domestic production, from 35.2 percent in 1975 to 36.4 percent in 1976.

A survey of customers of Davenshire, Incorporated revealed that several customers accounting for a significant proportion of the subject firms sales increased purchases of imports of women's slacks and shorts while decreasing purchases from the subject firm, in 1976 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's slacks and shorts produced at Davenshire, Inc., Davenport, Iowa contributed importantly to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Davenshire, Inc., Davenport, Iowa who become totally or partially separated from employment on or after January 11, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28410 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3978]

DAY MINES, INC., TAMARACK MINE, WALLACE, IDAHO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3978: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on July 19, 1978, in response to a worker petition received on July 17, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing zinc ore at the Tamarack Mine of Day Mines Inc., Wallace, Idaho.

The notice of investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Day Mines, Inc., *Metals Week*, *Metal Bulletin*, the American Bureau of Metal Statistics, the U.S. Department of Commerce, the U.S. International Trade Commis-

sion, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

The ratio of imports of slab zinc to domestic production increased from 76.7 percent in 1975 to 127.0 percent in 1976 and 127.9 percent in 1977. In the first 3 months of 1978, the ratio of imports to domestic production increased to 152.1 percent from 94.0 percent in the first 3 months of 1977.

Industry sources maintain that domestic suppliers of zinc can remain competitive with foreign suppliers as long as the domestic price is within 5 cents per pound of the London Metal Exchange price. Except for brief periods in the spring and summer of 1976 and in March 1977, the price differential between U.S. producers and the LME has exceeded 5 cents per pound. The average U.S. producers' price for zinc was 7.6 cents per pound higher than the average LME zinc price in 1977, well above the 5-cent limit at which domestic suppliers can remain competitive. In the first quarter of 1978, the average U.S. producers' price was 7.2 cents per pound above the average LME price.

Evidence developed during the course of the investigation indicates that imports of refined zinc metal have been an important factor affecting domestic sales of zinc and depressing the price of zinc. The depressed price of zinc has brought about a reduction in the domestic production of refined zinc and has resulted in cutbacks and shutdowns at many mines and concentrators producing zinc ore and zinc concentrate including the Tamarack Mine of Day Mines, Inc.

The cost of extensive exploratory operations on the Tamarack Mines were expected to be recovered through long-term ore production at the mine. This was premised on increasing zinc prices in 1975 and 1976. When prices dropped sharply in the latter part of 1977 and early 1978, the mine was shut permanently and will not be reopened until zinc prices are higher than production costs.

Conclusion

After careful review of the facts obtained in the investigation I conclude that increased imports of articles like or directly competitive with zinc ore produced by the Tamarack Mine of Day Mines Inc. contributed importantly to the decline in production and to the total or partial separations of workers at that mine. In accordance with the provisions of the act, I make the following certification:

All workers at the Tamarack Mine of Day Mines Inc., Wallace, Idaho, who became totally or partially separated from employment on or after March 31, 1978, and before July 31, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28411 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3361]

DELUCA SPORTSWEAR, INC., PHILADELPHIA, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3361: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 20, 1978, in response to a worker petition received on February 21, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's tailored clothing at Deluca Sportswear, Inc., Philadelphia, Pa.

The Notice of Investigation was published in the Federal Register on April 7, 1978 (43 FR 14776-14777). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Deluca Sportswear, Incorporated, its Customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. The investigation revealed that, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boys' tailored suits increased absolutely and relative to domestic production from 1976 to 1977 and decreased absolutely during the first quarter of 1978 compared to the first quarter of 1977.

Clothing manufactuers for which Deluca Sportswear, Incorporated did contract work reported that they do not purchase, either directly or indirectly, imported articles of men's tailored clothing. Moreover, total sales of the manufacturers increased from 1976 to 1977.

A retail firm which purchased men's tailored clothing from Deluca reported that it did not purchase, either directly or indirectly, imported articles of men's tailored clothing.

Conclusion

After careful review, I determine that workers at Deluca Sportswear, Inc., Philadelphia, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

Harry J. Gilman,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28412 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3577]

DOM ROSE FASHIONS, INC., NEWBURGH, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3577: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescirbed in section 222 of the act.

The investigation was initiated on May 4, 1978, in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' rainwear at Dom Rose Fashions, Inc., Newburgh, N.Y.

The Notice of Investigation was published in the Federal Register on May 23, 1978 (43 FR 22087-88). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Dom Rose Fashions, Inc., its manufacturer, U.S. Department of Commerce, the U.S. International Trade Commission, the National Council of American, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility

requirements of section 222 of the act must be met. The investigation has revealed that all of the requirements have been met.

Imports of women's, misses' and children's raincoats increased 37 percent from 191 thousand dozens in 1975 to 261 thousand dozens in 1976 then declined 7 percent to 242 thousand dozens in 1977. Imports increased 54 percent from 84 thousand dozens in the first quarter of 1977 to 129 thousand dozens in the first quarter of 1978. The ratio of imports to domestic production increased from 36.8 percent in 1975 to 45.0 percent in 1976 then declined to 40.3 percent in 1977.

The Department's survey of customers purchasing rainwear from Dom Rose Fashions' manufacturer, whose sales have also declined, revealed that the impact of imports is substantial. All respondents to the survey reported direct purchases of imports and some respondents reported indirect import purchases as well. Import purchases by the respondents were large and increasing from 1976 through the first half of 1978 while purchases from the subject firm were in many cases declining.

CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases of imports of articles like or directly competitive with ladies' rainwear produced at Dom Rose Fashions, Inc., Newburgh, N.Y. contributed importantly to the decline in sales and production and to the total or partial separation of workers of that firm. In accordance with the provisions of the act, I make the following certification:

All workers of Dom Rose Fashions, Incorporated, Newburgh, N.Y. who became totally or partially separated from employment on or after April 24, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[Fr Doc. 78-28413 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3634]

D&P CLOTHING CO., INC., PASSAIC, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3634: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' winter coats and raincoats at D&P Clothing Co., Inc., Passaic, N.J. During the course of the investigation it was discovered that D&P manufactures ladies winter coats.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of D&P Clothing Co., Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. The investigation revealed that all of the criteria have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of the principal manufacturers for which D&P Clothing Co. worked in 1976 and 1977. Manufacturers that accounted for a majority of sales in 1976 and 1977 reduced purchases from D&P Clothing Co. in 1977 and 1978, while increasing purchases of imported ladies' coats.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at D&P Clothing Co., Passaic, N.J. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers of D&P Clothing Co., Inc., Passaic, N.J. who become totally or partially separated from employment on or after July 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28414 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3393]

FASHION PRINTS, NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3393: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 29, 1978, in response to a worker petition received on March 20, 1978, which was filed on behalf of workers and former workers producing printed fabrics (printing service for textile and apparel companies) at the New York, N.Y., sales office of Fashion Prints.

The Notice of Investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fashion Prints, its customers, the American Textile Manufacturers Institute the National Cotton Council, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act must be met. It is concluded that all of the requirements have been met.

The petitioners allege that increased imports of finished printed apparel (sweaters, shirts, blouses and other finished garments) and printed fabrics have contributed to the decline in sales and production and to the separations of workers producing printed fabrics at Fashion Prints in Allentown, Pa. and in New York, N.Y. However, imported apparel cannot be considered like or directly competitive with printed fabrics. Imports of printed fabrics must be considered in determining import injury to workers producing printed fabrics.

Fashion Prints, Allentown, Pa. (TA-W-3392) and its sales office in New York, N.Y. produced printed fabrics

(printing service for textile and apparel companies).

U.S. imports of finished fabrics (bleached, dyed, and printed) increased both absolutely and relatively from 1975 to 1976, decreased absolutely but increased relatively from 1976 to 1977 and increased 43 percent in the first quarter of 1978 compared with the similar period of 1977.

Responses to a survey of customers of the subject firm indicated that customers who reduced purchases from the subject firm from 1976 to 1977 increased their purchases of imports during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the print fabrics produced by Fashion Prints, Allentown, Pa. and its sales office in New York, N.Y. contributed importantly to the decline in production and to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Fashion Prints sales office in New York, N.Y. who became totally or partially separated from employment on or after March 16, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28415 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3392]

FASHION PRINTS, ALLENTOWN, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3392: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 29, 1978 in response to a worker petition received on March 20, 1978, which was filed on behalf of workers and former workers producing printed fabrics (printing service for textile and apparel companies) at the Allentown, Pa. plant of Fashion Prints.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fashion Prints, its customers, the American Textile Manufacturers Institute, the National Cotton Council, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

The petitioners allege that increased imports of finished apparel (sweaters, shirts, blouses and other finished garments) and printed fabrics have contributed to the decline in sales and production and to the separations of workers producing printed fabrics at Fashion Prints in Allentown, Pa. and in New York, N.Y. However, imported apparel cannot be considered like or directly competitive with printed fabric. Imports of printed fabrics must be considered in determining import injury to workers producing printed fabrics.

Fashion Prints, Allentown, Pa. and its sales office in New York, N.Y. (TA-W-3393) produced printed fabrics (printing service for textile and apparel companies).

U.S. imports of finished fabrics (bleached, dyed, and printed) increased both absolutely and relatively from 1975 to 1976, decreased absolutely but increased relatively from 1976 to 1977 and increased 43 percent in the first quarter of 1978 compared with the similar period of 1977.

Responses to a survey of customers of the subject firm indicated that customers who reduced purchases from the subject firm from 1976 to 1977 increased their purchases of imports during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the print fabrics produced by Fashion Prints at Allentown, Pa. contributed importantly to the decline in sales or production and to the total or partial separation of workers at the plant. In accordance with the provisions of the act, I make the following certification:

All workers of the Fashion Prints plant in Allentown, Pa. who became totally or partially separated from employment on or after March 16, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28416 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3787]

FRANZA COATS, BROOKLYN, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3787: Investigation regarding certification of eligibiity to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 31, 1978, in response to a worker petition received on May 26, 1978, which was filed on behalf of workers and former workers producing ladies' coats at Franza Coats, Brooklyn, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26497-98). No public hearing was requested and none was held.

The information upon which the determination was made, was obtained principally from officials of Franza Coats, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 1,517 thousand dozen in 1975, to 2,252 thousand dozen in 1976, to 2,723 thousand dozen in 1977. Imports decreased in the first quarter of 1978, compared to the first quarter of 1977, from 590 thousand dozen to 572 thousand dozen.

The ratio of U.S. imports to domestic production of women's, misses', and children's coats and jackets increased from 38.9 percent in 1975, to 48.3 percent in 1976, to 54.9 percent in 1977.

Customers of Franza Coats in 1976 were out of business in 1977. Customers of Franza Coats in 1977 placed spring orders with offshore manufacturers in late 1977. Franza Coats ceased production in December 1977 as a result of the loss of orders to offshore producers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the ladies' coats produced at Franza Coats, Brooklyn, N.Y., contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the act, I make the following certification:

All workers of Franza Coats, Brooklyn, N.Y., who became totally or partially separated from employment on or after May 22, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28417 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3975]

F/V VICTORY II, PROVINCETOWN, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3975: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on July 13, 1978, in response to a worker petition received on July 10, 1978, which was filed on behalf of fishermen and former fishermen catching fish for the F/V Victory II, Provincetown, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885-6). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the F/V Victory II, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligiblity to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm subdivision have decreased absolutely.

The F/V Victory II catches ground and flatfish. Sales of ground and flatfish by the F/V Victory II increased in value in 1977 compared to 1976 and in the first 7 months of 1978 compared to the first 7 months of 1977.

CONCLUSION

After careful review, I determine that fishermen of the F/V Victory II, Provincetown, Mass., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22d day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28418 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3589]

GLAMOUR FASHION, INC., PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results ot TA-W-3589: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at Glamour Fashion, Inc., Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Glamour Fashion, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to separations, or threat threof, and to the absolute decline in sales or production.

The Department conducted a survey of the only manufacturer for which Glamour Fashion, Inc., worked in the period beginning in June of 1976, and ending in May 1977, and the period beginning in June 1977, and ending in May 1978. During these periods the manufacturer did not import ladies' coats or raincoats and sales by the manufacturer increased.

CONCLUSION

After careful review, I determine that all workers of Glamour Fashion, Inc., Paterson, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28419 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3560]

GRIFFITH-CUSTER STEEL CO., JOHNSTOWN, PA. AND R & W ENTERPRISES, INC., JOHNSTOWN, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3560: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on April 27, 1978, in response to a worker petition received on April 14, 1978, which was filed on behalf of workers and former workers producing fabricated structural steel, plates, and angles at R & W Enterprises, Inc., Griffith-Custer Steel, Johnstown, Pa. Subsequent investigation revealed that Griffith-Custer Steel, Co. sold its assets to R & W Enterprises, Inc. in December 1977.

The notice of investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Griffith-Custer Steel Co., R & W Enterprises, Inc., their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the worker's firm or an appropriate subdivision thereof contributed importantly to the total or partial separation, or threats thereof, and to the absolute decline in sales or production.

The Department of Labor conducted a survey of some of the customers of Griffith-Custer Steel Co. and R & W Enterprises, Inc. This survey revealed that the responding customers of the Griffith-Custer Steel Co. did not purchase any imported fabricated structural steel, plates, or angles in the period 1975 through the first quarter of 1978.

CONCLUSION

After careful review I determine that all workers of the Griffith-Custer Steel Co. and R & W Enterprises, Inc. of Johnstown, Pa., are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28420 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3981]

GUTERAL SPECIAL STEEL CORP., SIMMONDS STEEL DIVISION, LOCKPORT, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3981: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on July 19, 1978, in response to a worker petition received on July 13, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing specialty steel, including saw steel at the Lockport, N.Y., plant of the Simmonds Steel Division of Guterl Speciality Corp. The investigation revealed that the correct name of the parent corporation is Guteral Special Steel Corp. and that stainless, magnet, heat resistant, high temperature, thermostatic, and tool steel are produced at the plant.

The notice of investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Simmonds Steel Division, industry analysts, and Department files.

IN order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligility requirements of section 222 of the of act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The Department's investigation revealed that the average number of production workers at the Simmonds Steel Division increased in the first 7 months of 1978 compared to the same period in 1977. Employment in each month of 1978 increased compared to employment in the like month of 1977. Officials at Simmonds Steel indicated that no permanent layoffs occurred at the Lockport, N.Y., plant during 1978.

The average number of hours worked per week increased in the first 7 months of 1978 compared to the like period in 1977.

There is no threat of immediate separations to the workers.

CONCLUSION

After careful review I determine that all workers of the Simmonds Steel Division, of Guterl Special Steel Corp., Lockport, N.Y., are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28421 Filed 10-6-78; 8:45 am]

[4510-21-M]

[TA-W-4038]

HOLDEN & QUICK, INC., NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4038: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on August 7, 1978, in response to a worker petition received on August 7, 1978, which was filed by the United Shoe Workers of America on behalf of all workers producing shoe patterns at Holden & Quick, Inc., New York, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635.) No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Holden & Quick, Inc., industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Imported shoes cannot be considered to be like or directly competitive with shoe patterns used in the production of shoes. Imports of shoe patterns must be considered in determining import injury to workers producing shoe patterns.

Industry analysts revealed that imports of shoe patterns are negligible. Importation of shoe patterns is not profitable to shoe producers. It is essential that patterns be produced and shipped quickly to the shoe manufacturer due to the extremely competitive nature of the shoe manufacturing industry. Thus, as a result of the time constraints for production, imports of shoe patterns are negligible.

CONCLUSION

After careful review I determine that all workers of Holden & Quick, Inc., New York, N.Y. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-28422 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3916]

HUDSON WIRE CO., WINSTEAD, CONN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3916: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on June 27, 1978, in response to a worker petition received on June 26, 1978, which was filed on behalf of all workers producing magnet wire at the Winstead, Conn., plant of Hudson Wire Co., Inc.

The notice of investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29364). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hudson Wire Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any other criteria have have met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threats thereof, and to the absolute decline in sales or production.

The Winstead, Conn., plant of Hudson Wire produced magnet wire. Hudson Wire also owns a plant in Trenton, Ga., which produces magnet wire.

Evidence developed during the Department's investigation revealed that the production of magnet wire has been transferred from the Winstead plant to the Trenton plant. Further evidence revealed that as sales and production have declined at the Winstead plant, sales and production at the Trenton plant have increased. Employment losses at the Winstead, Conn., plant are attributable to the transfer of production to the Trenton, Ga., plant.

CONCLUSION

After careful review I determine that all workers at the Hudson Wire Co., Winstead, Conn., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28423 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3181]

HY-GRADE COAT CO., INC., NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3181: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 21, 1978, in response to a worker petition received on February 6, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's tailored coats at Hy-Grade Coat Co., Inc., New York, N.Y. Hy-Grade Coat Co., Inc., is a division of Hy-Grade Sportswear Co., Inc., of New York, N.Y. During the course of the investigation, it was establish that Hy-Grade Coat Co. also produces women's tailored sportcoats.

The notice of investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8864). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hy-Grade Coat Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

On January 10, 1976, the employees of Hy-Grade Coat Co., Inc., were certified as eligible to apply for trade adjustment assistance (TA-W-287). This certification expired on January 10, 1978.

Average employment of production workers at Hy-Grade Coat Co., Inc., was 40 percent higher in the first 6 months of 1978 than in the first 6 months of 1977. Average hours worked increased slightly over the same period. There is no threat of total or partial separations for the foreseeable future.

CONCLUSION

After careful review I determine that all workers of Hy-Grade Coat Co., Inc., New York, N.Y. are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28424 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3335]

HY-GRADE SPORTSWEAR CO., INC., NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3335: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 9, 1978, as an expansion of investigation TA-W-3181, which was initiated in response to a worker petition received on February 6, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers at Hy-Grade Coat Co., Inc., New York, N.Y. Investigation TA-W-3335 covers workers and former workers producing men's tailored suits, sportcoats, suburban coats, and trousers at Hy-Grade Sportswear Co., Inc., New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hy-Grade Sportswear Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-

sistance, each of the group eligibility requirements of section 222 of the of act must be met. Without regard to whether any of the other criteria have have met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

On January 10, 1976, the employees of Hy-Grade Sportswear Co., Inc., were certified as eligible to apply for trade adjustment assistance (TA-W-287). This certification expired on January 10, 1978.

Average employment of production workers at Hy-Grade Sportswear Co., Inc., was 66.7 percent higher in the first 6 months of 1978 than in the first 6 months of 1977. Average hours worked did not change significantly over the same period. There is no threat of total or partial separations for the foreseeable future.

CONCLUSION

After careful review I determine that all workers of Hy-Grade Sportswear Co., Inc., New York, N.Y. are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28425 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3620]

ITALCRAFT, INC., HOBOKEN, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3620: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Italcraft, Inc., Hoboken, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Italcraft, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of such firm or subdivision have decreased absolutely.

The value of sales by Italcraft increased from 1976 to 1977 and increased in the first 5 months of 1978 compared to the like period of 1977. Sales data were adjusted for price changes by use of the Wholesale Price Index for women's apparel. Italcraft produces coats on a contract basis. Therefore sales and production are equal.

CONCLUSION

After careful review, I determine that all workers of Italcraft, Inc., Hoboken, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-28426 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-2731]

JOSEPH PICKARD'S SONS CO., PHILADELPHIA, PA.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2731: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on December 6, 1977, in response to a worker petition received on November 25, 1977, which was filed on behalf of workers and former workers producing tempered spring steel at the Steel Division of Joseph Pickard's Sons Co., Philadelphia, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on December 30, 1977 (43 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Joseph Pickard's Sons Co., its customers, the U.S. Department of Commerce, U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. The investigation revealed that all of the criteria have been met.

United States imports of tempered spring steel increased from 1975 to 1976 and from 1976 to 1977. The import to domestic production ratio increased from 1975 to 1976 and from 1976 to 1977.

A survey revealed that Pickard's major customer decreased purchases from all domestic sources and increased purchases from foreign sources in 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with tempered spring steel produced by the Steel Division of Joseph Pickard's Sons Co., Philadelphia, Pa. contributed importantly to the decline in sales and production and to the separation of workers engaged in employment related to such production in that Division. In accordance with the provisions of the act, I make the following certification:

All workers of the Steel Division of Joseph Pickard's Sons Co., Philadelphia, Pa. who became totally or partially separated from employment on or after October 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of September 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-28427 Filed 10-6-78; 8:45 am]

[4510-28-M]

[TA-W-3774]

KENNECOTT COPPER CORP., UTAH MINES DIVISION, BINGHAM CANYON, UTAH

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 25, 1978 in response to a worker petition received on May 22, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers engaged in the mining of copper ore at the

Bingham Canyon, Utah plant of the Utah Mines Division of Kennecott Copper Corp.

Notice of investigation was published in the FEDERAL REGISTER on June 9, 1978 (43 FR 25197-98). No public hearing was requested and none was held.

The petitioner, the United Steelworkers of America, requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, this 2d day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-28428 Filed 10-6-78; 8:45 am]

[4510-27-M]

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (43 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Big River Mfg. Co., Kittanning, Pa.; 8-31-78 to 8-30-79. (Boys' shirts.)

Bland Sportswear, Inc., Bland, Va.; 7-24-78 to 7-23-79; 10 learners. (Boys' shorts.)

Caraway Mfg. Corp., Caraway, Ark.; 8-22-78 to 8-21-79; 10 learners. (Women's dresses.)

Chatham Knitting Mills, Inc., Chatham, Va.; 7-22-78 to 7-21-79; 8 learners. (Men's jackets.)

Cordele Uniform Co., Cordele, Ga.; 9-8-78 to 9-7-79. (Men's pants.)

Crane Mfg. Co., Crane, Mo.; 8-14-78 to 8-13-79. (Women's and men's jeans.)

Elder Mfg. Co., Dexter, Mo.; 8-21-78 to 8-20-79. (Men's and boys' pants.)

Giles Mfg. Corp., Narrows, Va.; 9-3-78 to 9-2-79. (Children's shirts.)

Somerset Shirt & Pajama Co., Somerset, Pa.; 9-3-78 to 9-2-79. (Boys' nightwear.)

Soperton Mfg. Co. Soperton, Ga.; 9-10-78 to 9-9-79. (Men's shirts.)

The following plant expansion certificate was issued authorizing the number of learners indicated.

Busy B Mfg. Co., Boswell, Okla.; 7-13-78 to 1-12-79; 20 learners for plant expansion purposes. (Women's and children's dresses.)

The following certificates were issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended.)

Louis Gallet, Inc., Uniontown, Pa.; 6-21-78 to 6-20-79; 5 learners for normal labor turnover purposes. (Boys' and men's sweaters.)

Junior Form Lingerie Corp., Boswell, Pa.; 6-23-78 to 6-22-79; 5 percent of the total number of factory production workers for normal labor turnover purposes. (Ladies' underwear and pajamas.)

The following learner certificate was issued in Puerto Rico to the company hereinafter named. The effective and expiration date, learner rates, occupation, learning periods, and number of learners authorized to be employed are indicated.

WMSI Puritan Caribbean Division, Aguas Buenas, P.R.; 7-26-78 to 7-25-79; 30 learners for normal labor turnover purposes in the occupation of machine knitting for a learning period of 480 hours at the rate of $2.20 an hour for the first 240 hours and $2.37 an hour for the remaining 240 hours. (Sweaters and shirts.)

Each learner certificate has been issued upon the representations of the employer which, among other things were that employement of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before October 25, 1978.

Signed at Washington, D.C., this 3d day of October 1978.

DONALD T. CRUMBACK,
Authorized Representative of the Administrator.

[FR Doc. 78-28382 Filed 10-6-78; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ADVISORY COMMITTEE HUMANITIES PANEL

Meeting

OCTOBER 3, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506:

1. Date: October 25, 1978. Time: 9 a.m. to 5:30 p.m. Room: 314. Purpose: To review Special Projects applications in the area of cable television submitted to the National Endowment for the Humanities for projects beginning after November 1, 1979.
2. Date: November 3, 1978. Time: 9 a.m. to 5:30 p.m. Room: 11th Floor Conference Room. Purpose: To review Near Eastern language applications submitted to the Translations Program of the National Endowment for the Humanities for projects beginning April 1, 1979.
3. Date: November 6, 1978. Time: 9 a.m. to 5:30 p.m. Room: 11th Floor Conference Room. Purpose: To review Asian language applications submitted to the Translations Program of the National Endowment for the Humanities for projects beginning April 1, 1979.
4. Date: November 13, 1978. Time: 9 a.m. to 5:30 p.m. Room: 11th Floor Conference Room. Purpose: To review Romance language applications submitted to the Translations Program of the National Endowment for the Humanities for projects beginning April 1, 1979.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-28376 Filed 10-6-78; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COUNCIL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NSF ADVISORY COUNCIL.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Date and time: Thursday, October 26, and Friday, October 27, 1978; 9 a.m. until 5 p.m. both days.
Type of meeting: Open.
Contact person: Ms. Margaret L. Windus, Executive Secretary, NSF Advisory Council, National Science Foundation, room 518, 1800 G Street NW., Washington, D.C. 20550. Telephone: 202-632-4368.
Purpose of advisory council: The purpose of the NSF Advisory Council is to provide advice and counsel to the NSF Director and principal members of his staff on Foundationwide issues which require the expertise of the many and varied disciplines and program interests represented in the Foundation.
Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, National Science Foundation, room 248, 1800 G Street NW., Washington, D.C. 20550.
Agenda: The agenda of the 2-day meeting will include discussion of the final reports of the three remaining task groups and introduction of new Advisory Council members and assignment and discussion of new tasks.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28317 Filed 10-6-78; 8:45 am]

[7555-01-M]

EXECUTIVE COMMITTEE OF THE OCEAN SCIENCES ADVISORY COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-563, as amended, the National Science Foundation announces the following meeting:

EXECUTIVE COMMITTEE OF THE OCEAN SCIENCES ADVISORY COMMITTEE

Date and time: October 26 and 27, 1978; 8:30 a.m. to 6 p.m. each day
Place: Room 642, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.
Type of meeting: Part-Open—October 26, closed; October 27, open.
Contact person: Dr. Dirk Frankenberg, Director, Division of Ocean Sciences, room 609, National Science Foundation, Washington, D.C. 20550 Telephone: 202-632-5913.
Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF's Division of Ocean Sciences.
Agenda: *October 26, 1978, closed.* Review and evaluation of research proposals as part of the selection process for the development and support of large-scale oceanographic research projects.
October 27, 1978, open. 8:30 a.m. to 2 p.m., Discussion of "A Plan for Research Project Support in the 1980's."
2 p.m. to 2:30 p.m., Report on the Status of Oceanographic Equipment.
2:30 p.m. to adjournment, Establish agenda for executive committee oversight reviews.
Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, room 248, 1800 G Street NW., Washington, D.C. 20550.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28325 Filed 10-6-78; 8:45 am]

[7555-01-M]

PRIVACY ACT OF 1974

Amendment to a System of Records

Notice is hereby given of an amendment to NSF System of Records No. 44 entitled, "Visiting Women Scientists Roster", as published in the FEDERAL REGISTER Volume 42, No. 138, page 37078 on July 19, 1977. Changes are being made to change the "Routine Use" for the system to allow the listing to be released to high schools and other groups who wish to bring women scientists into contact with junior high school, high school and college students. Interested persons are invited to submit written data, views or arguments to the Director, National Science Foundation, Attention: General Counsel, Washington, D.C. 20550, on or before October 27, 1978.

NSF-44

System name: Visiting Women Scientists Roster.
System location: Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709.
Categories of individuals covered by the system: Women scientists who have asked to be included in a roster to be released to schools and professional groups.
Categories of records in the system: Name, address, telephone, ID number, science field, type of employment, highest degree earned, and race.
Routine uses of record maintained in the system, including categories of users, and the purposes of such uses: The roster will be released to high schools and other groups who wish to bring women scientists into contact with junior high school, high school and college students.
Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:
Storage: Information will be stored on computer disk.
Retrievability: Computer records retrievable by ID number, name, geographic location, science field, type of employment.
Retention and disposal: Maintained at the Research Triangle Institute until August 1979, then turned over to NSF for disposition.
System manager: Director, Division of Scientific Personnel Improvement. NSF, 2000 L Street NW., Washington, D.C. 20550.
Notification procedure: The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.
Record access procedures: See "Notification" above.
Contesting record procedures: See "Notification" above.
Record source categories: Information obtained from individuals.

Dated: September 27, 1978.

RICHARD C. ATKINSON,
Director.

[FR Doc. 78-28330 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE FOR OCEANOGRAPHY PROJECT SUPPORT OF THE ADVISORY COMMITTEE FOR OCEAN SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

SUBCOMMITTEE FOR OCEANOGRAPHY PROJECT SUPPORT

Date and time: October 24 and 25, 1978; 9 a.m. to 6 p.m. each day.
Place: Rooms 642 and 628, National Science Foundation, 1800 G Street NW., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. Robert E. Wall, Head, Oceanography Section, Room 611, National Science Foundation, Washington, D.C., 20550, telephone 202-632-4227.
Purpose of meeting: To provide advice and recommendations concerning support for research in Oceanogrpahy.
Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determination by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28318 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE FOR SENSORY PHYSIOLOGY AND PERCEPTION OF THE ADVISORY COMMITTEE FOR BEHAVIORAL AND NEURAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

SUBCOMMITTEE FOR SENSORY PHYSIOLOGY AND PERCEPTION OF THE ADVISORY COMMITTEE FOR BEHAVIORAL AND NEURAL SCIENCES

Date and time: October 25 and 26, 1978; 9 a.m. to 5 p.m. each day.

Place: Room 1224, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Terrence R. Dolan, Program Director for Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-634-1624.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determination by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28324 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON ANTHROPOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

SUBCOMMITTEE ON ANTHROPOLOGY OF THE ADVISORY COMMITTEE FOR BEHAVIORAL AND NEURAL SCIENCES

Date and time: October 23 and 24, 1978; 9 a.m. to 6 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, Room 321.

Type of meeting: Closed.

Contact person: Dr. John Yellen, Program Director, Anthropology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4208.

Purpose of subcommittee: To provide advice and recommendations concerning support for anthropology (cultural antropology).

Agenda: To review and evaluate proposals as part of the selected process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28319 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON LAW AND SOCIAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

SUBCOMMITTEE ON LAW AND SOCIAL SCIENCES OF THE ADVISORY COMMITTEE FOR SOCIAL SCIENCES

Date and time: October 26 and 27, 1978; 9 a.m. to 5 p.m. each day.

Place: Room 536, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Stephen L. Wasby, Program Director, Law and Social Sciences Program, Room 312, National Science Foundation, Washington, D.C. 20550, telephone 202-632-5816.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in law and social sciences.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28321 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON MOLECULAR BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

SUBCOMMITTEE ON MOLECULAR BIOLOGY, GROUP A, OF THE ADVISORY COMMITTEE FOR PHYSIOLOGY, CELLULAR AND MOLECULAR BIOLOGY

Date and time: October 26 and 27, 1978; 9 a.m. to 5 p.m. each day.

Place: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Frederick I. Tsuji, Program Director, Biochemistry Program, Room 330, National Science Foundation, Washington, D.C., 20550, telephone 202-632-4260.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in molecular biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28323 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON POPULATION BIOLOGY AND PHYSIOLOGICAL ECOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

SUBCOMMITTEE ON POPULATION BIOLOGY AND PHYSIOLOGICAL ECOLOGY OF THE ADVISORY COMMITTEE FOR ENVIRONMENTAL BIOLOGY.

Date and time: October 26 and 27, 1978; 8 a.m. to 5 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Donald W. Kaufman, Associate Program Director, Population Biology and Physiological Ecology Program, Room 336, National Science Foundation, Washington, D.C., 20550, telephone 202-632-7317.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28320 Filed 10-6-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON REGULATORY BIOLOGY OF THE ADVISORY COMMITTEE FOR PHYSIOLOGY, CELLUAR AND MOLECULAR BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

SUBCOMMITTEE ON REGULATORY BIOLOGY OF THE ADVISORY COMMITTEE FOR PHSIOLOGY, CELLULAR AND MOLECULAR BIOLOGY.

Date and time: October 26 and 27, 1978; 8:30 a.m. to 5 p.m.

Place: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Robert B. Sanders, Program Director, Regulatory Biology Program, Room 333, National Science Foundation, Washington, D.C., 20550, telephone 202-632-4298.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals and project as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: October 3, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-28322 Filed 10-6-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON PLANT ARRANGEMENTS

Meeting

The ACRS Subcommittee on Plant Arrangements will hold an open meeting on October 25, 1978, in Room 1046, 1717 H St. NW., Washington, D.C. 20555, to begin its review of the NRC Generic Issue, Systems Interaction in Nuclear Power Plants, Task A-17, and to review the Zion Station Systems Interaction Study. Notice of this meeting was published September 21, 1978 (43 FR 42826).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Wednesday, October 25, 1978, 8:30 a.m. until the conclusion of business.* The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Commonwealth Edison Co., and their consultants, pertinent to the agenda items. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. Robert L. Wright, Jr., telephone 202-634-3314 between 8:15 a.m. and 5 p.m., e.d.t.

Dated: October 4, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-28556 Filed 10-6-78; 8:45 am]

[3190-01-M]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Solicitation of Public Views

Pursuant to section 201 of the Trade Act of 1974, on September 21, 1978, the President received a report from the United States International Trade Commission (USITC) on the case of Certain Fishing Tackle (Investigation No. TA-201-34). The Commission submitted a report containing an affirmative determination that as a result of their being designated as eligible for duty-free treatment under the Generalized System of Preferences (GSP), artifical baits and flies, provided for in item 731.60 of the TSUS, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.[1]

The Commission finds and rec-ommends that, to prevent or remedy the serious injury to the domestic industry, it is necessary to suspend for a period of 5 years, the designation of artificial baits and flies, provided for in item 731.60 of the TSUS, as eligible for duty-free treatment under the GSP.

Within 60 days of receiving a report from the Commission containing an affirmative determination, the President must determine what method and amount of import relief he will provide or determine that the provision of relief is not in the national economic interest, and whether he will direct expeditious consideration of adjustment assistance petitions.

In determining whether to provide import relief and what method and amount of import relief he will provide, the President must take into account, in addition to other considerations he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the Nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States market is a focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not provided.

The Office of the Special Representative for Trade Negotiations chairs the interagency Trade Policy Committee structure that makes recommendations to the President as to what action, if any, he should take on reports submitted by the USITC under section 201(d). In order to assist the Trade Policy Staff Committee in developing recommendations to the President as to what action to take under sections 202 and 203 of the Trade Act of 1974, the Committee welcomes briefs from interested parties on the above listed subjects. (Additional information on this case is available in USITC report 201-34.)

Briefs should be submitted in twenty (20) copies to Secretary, Trade Policy Staff Committee, Room 728, Office of the Special Representative for Trade Negotiations, 1800 G Street NW., Washington, D.C. 20506.

To be considered by the Trade Policy Staff Committee, submissions should be received in the Office of the Special Representative for Trade Negotiations no later than the close of business Friday, October 20, 1978.

WILLIAM B. KELLY Jr.,
Chairman,
Trade Policy Staff Committee.

[FR Doc. 78-28352 Filed 10-6-78; 8:45 am]

[1] The Commission determined that snelled hooks; fishing rods and parts thereof; and fishing reels and parts thereof; provided for in items 731.05; 731.15; and 731.20 through 731.26, inclusive, of the Tariff Schedules of the United States (TSUS), are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

[3210-01-M]

OVERSEAS PRIVATE INVESTMENT CORPORATION

[Redelegation of Authority No. A-78-19]

AUTHORITY OF OFFICERS

Redelegation of Authority

By virtue of the authority vested in me as Acting President of the Overseas Private Investment Corp. (the "Corporation"), I hereby rescind OPIC Redelegation of Authority No. A-71-2, OPIC Redelegation of Authority No. DL/B-(71)7, OPIC Redelegation of Authority No. A-74-10, OPIC Redelegation of Authority No. A-75-11 (§§ 703.15, 703.30-703.33), OPIC Redelegation of Authority No. A-78-13, and hereby redelegate authority as follows:

THE INSURANCE DEPARTMENT

GENERAL

(1) The Insurance Department of the Corporation is hereby established as the department primarily responsible for the administration of the Corporation's insurance and reinsurance authorities under section 234(a) and (f) of the act, 22 U.S.C. Sec. 2194(a) and (f). The Insurance Department shall be headed by the Vice President for Insurance.

VICE PRESIDENT FOR INSURANCE

(2) The Vice President for Insurance is hereby delegated the following authorities:

(a) To authorize and issue contracts of insurance or reinsurance covering risks of the type described in section 234(a) of the act, 22 U.S.C. Sec. 2194(a), in the name and on behalf of the Corporation, or to the extent that the Corporation is duly authorized to act as agent in the name and on behalf of any association, corporation or other entity, to execute and enter into in the name and on behalf of such association, corporation or other entity any such contract of insurance or reinsurance, provided that (i) no such contract of insurance shall cover an investment, as described in the terms and conditions of any such contract, that exceeds $10,000,000, (ii) the maximum contingent liability of the Corporation, or any such association, corporation or other entity, with respect to any investment insured under any such contract of insurance shall not exceed $30,000,000, and (iii) the maximum contingent liability of the Corporation, or any such association, corporation or other entity, with respect to any such contract of reinsurance shall not exceed $30,000,000;

(b) To make arrangements for sharing liabilities under section 234(a)(2) of the act, 22 U.S.C. Sec. 2194(a)(2),

provided that the maximum contingent liability of the Corporation under any such arrangement shall not exceed $10,000,000;

(c) To administer contracts of insurance or reinsurance covering risks of the type described in section 234(a) of the act, 22 U.S.C. Sec. 2194(a), and arrangements for sharing of liabilities under Section 234(a)(2) of the Act, 22 U.S.C. Sec. 2194(a)(2), and otherwise exercise the rights of the Corporation or, as the case may be, of any association, corporation or other entity for which the Corporation is authorized to act as agent, with respect to any such contract or arrangement, or any such similar contract issued under any predecessor program and authority similar to that provided in section 234(a) of the Act, 22 U.S.C. Sec. 2194(a), and any related agreement or instrument which shall include, without limitation, the authority to amend, to consent to assignment of any such contract by the insured thereunder, and to concur in the issuance by the Treasurer of notice of cancellation of any such contract for failure to pay such fees, provided that such authority shall not extend to (i) the determination of the validity or settlement of any claim or application for compensation presented by the insured party thereunder against the Corporation or any such association, corporation or other entity, (ii) the initiation, conduct or settlement of any litigation, arbitration or other adjudication under or with respect to such contracts of insurance and arrangements, or (iii) any action that would cause the maximum contingent liability of the Corporation, or of any such association, corporation or entity, to exceed $30,000,000 under any such contract of insurance or reinsurance of the type described in section 234(a) of the Act, 22 U.S.C. Sec. 2194(a), or $10,000,000 under any arrangements of the type described in section 234(a)(2) of the act, 22 U.S.C. 2194(a)(2);

(d) In connection with the exercise of the authority delegated in subparagraphs 2(a) through (c) above, to execute and enter into, in the name and on behalf of the Corporation or any such association, corporation or other entity any related agreement or instrument, to exercise all related functions and powers, other than the further redelegation of such authority, and to make all such related approvals and determinations as may be necessary or appropriate to carry out such authority and which he deems to be in the best interest of the Corporation; and

(e) To designate any officer or employee of the Corporation assigned to the insurance Department to assume and perform in an acting capacity for a period of time not exceeding 60 days the duties of an Insurance Director as specified in paragraph (4) below.

DEPUTY VICE PRESIDENT FOR INSURANCE

(3) There shall be one or more Deputy Vice Presidents for Insurance, as appointed from time to time by the President. Each Deputy Vice President for Insurance is hereby delegated all of the authority delegated to the Vice President for Insurance under subparagrphs (2) (a) thru (d) above. In the temporary absence of the Vice President for Insurance, or in the event of his death or resignation, the Deputy Vice Presidents for Insurance, in such order of succession as may be designated from time to time by the President, shall assume and perform the duties of the Vice President for Insurance until the Vice President for Insurance shall reassume his duties or until a successor shall be duly appointed and assume office.

THE INSURANCE DIRECTORS

(4) There shall be various Insurance Directors as appointed from time to time by the President, to perform such duties of administration or with respect to a particular region or function as may be determined by the President. Each such Director of Insurance is hereby delegated the following authority:

(a) To authorize and issue contracts of insurance or reinsurance covering the risks of the type described in section 234(a) of the act, 22 U.S.C. 2194(a), in the name and on behalf of the Corporation, or to the extent that the Corporation is duly authorized to act as agent in the name and on behalf of any association, corporation or other entity any such contract of insurance or reinsurance, provided that (i) no such contract of insurance shall cover an investment, as described in the terms and conditions of any such contract, that exceeds $1,000,000, (ii) the maximum contingent laibility of the Corporation, or any such association, corporation or other entity, under any such contract of insurance shall not exceed $3,000,000, and (iii) the maximum contingent liability of the Corporation, or any such association, corporation or other entity, with respect to any such contract of reinsurance shall not exceed $3,000,000;

(b) To administer and otherwise exercise the rights of the Corporation or, as the case may be, of any association, corporation or other entity for which the Corporation is authorized to act as agent, with respect to contracts of insurance or reinsurance of the type described in subparagraph(4)(a) above, or any such similar contract issued under any predecessor progam and authority similar to that provided in section 234(a) of the act, 22 U.S.C. Sec. 2194(b), and any related agreement or instrument, in which the maximum contingent liability of the Corporation does not exceed $3,000,000,which shall include, without limitation, the authority to amend, to consent to assignment of any such contract by the insured thereunder, and to concur in the issuance by the Treasurer of notice of cancellation of any such contract for failure to pay such fees, provided that such authority shall not extend to (i) the determination of the validity or settlement of any claim or application for compensation presented by the insured party thereunder against the Corporation or any such association, corporation or entity, (ii) the initiation, conduct or settlement of any litigation, arbitration or other adjudication under such contracts of insurance, or (iii) any action that would cause the maximum contingent liability of the Corporation, or of any such association, corporation or other entity, under any such contract to exceed $3,000,000; and

(c) In connection with the exercise of the authority delegated in subparagraph (4) (a) and (b) above, to execute and enter into, in the name and on behalf of the Corporation or any such association, corporation or other entity, any related agreement or instrument, to exercise all related functions and powers other than the further redelegation of such authority, and to make all such related approvals and determinations as may be necessary or appropriate to carry out such authority and which he deems to be in the best interest of the Corporation.

THE FINANCE DEPARTMENT

GENERAL

(5) The Finance Department of the Corporation is hereby established as the department primarily responsible for administration of the Corporation's finance authorities under section 234(b) (c) and (d) of the act, 22 U.S.C. Sec. 2194(b), (c) and (d).

VICE PRESIDENT FOR FINANCE

(6) The Vice President for Finance is hereby delegated the following authorities:

(a) To amend, implement, and consent to the assignment of any investment guaranty issued under section 234(b) of the Act, or under predecessor programs and authorities similar to that provided for in section 234(b) of the Act and in connection therewith to execute, amend, and implement other related agreements and to exercise all related functions and to make all related approvals and determinations as are deemed necessary or desirable, provided that no such amendment, related agreement, function, ap-

proval or determination shall increase the principal amount of the investment guaranty;

(b) To amend and implement loan agreements denominated in United States dollars under section 234(c) of the Act and in connection therewith to execute, amend and implement other related agreements and to exercise all related functions and to make all related approvals and determinations as are deemed necessary or desirable, provided that no such amendment, related agreement, function, approval or determination shall increase the principal amount of the loan;

(c) To authorize, execute, amend and implement loan agreements denominated in currencies other than United States dollars under section 234(c) of the act, and in connection therewith to execute, amend and implement other related agreements and to exercise all related functions and to make all related approvals and determinations as are deemed necessary or desirable; and

(d) To execute, amend and implement loan, grant and other agreements obligating amounts not to exceed $500,000 under section 234(d) of the act, and without regard to the amount obligated by such agreement, to exercise all related functions and to make all related approvals and determinations as are deemed necessary or desirable in connection with such agreement issued under section 234(d) of the act or in connection with predecessor programs and authorities similar to those provided for in section 234(d) of the act, provided that no amendment to any such agreement shall increase the amount obligated thereby.

DEPUTY VICE PRESIDENTS FOR FINANCE

(7) There shall be one or more Deputy Vice Presidents for Finance, as appointed from time to time by the President. Each Deputy Vice President for Finance is hereby delegated all of the authority delegated to the Vice President for Finance under paragraph (6) above.

FINANCE MANAGERS

(8) There shall be various Senior Managers, Project Finance; Managers, Project Finance; and Managers for Agribusinee, Small Business and other Projects within the Finance Department, as appointed from time to time by the President, to perform under the supervision of the Vice President for Finance and the Deputy Vice Presidents for Finance such duties of administration or with respect to a particular region or function and with such delegation of authority as may be determined by the President.

OFFICE OF THE GENERAL COUNSEL

GENERAL

(9) The Office of the General Counsel is hereby established as the department responsible for providing legal advice and legal services to the Corporation. The Office of the General Counsel shall be headed by the Vice President and General Counsel.

VICE PRESIDENT AND GENERAL COUNSEL

(10) The Vice President and General Counsel is hereby delegated the following authority:

(a) To take all actions deemed necessary or appropriate with respect to the processing or disposition of actual or impending claims under section 234(a)(1) of the act or under similar predecessor or successor legislative authority, exercising all relevant authority of the Corporation, including the authority conferred by section 237(i) of the act, except that, with respect to claims in excess of $1,000,000, such authority shall not extend to the final rejection or acceptance of liability. All authority delegated by this subparagraph may be redelegated with the exception of authority with respect to the final acceptance or rejection of liability.

THE TREASURER

GENERAL

(11) The Treasurer of the Corporation is the chief accounting, administrative, contracting, financial, and personnel officer of the Corporation.

THE TREASURER

(12) The Treasurer is hereby delegated the following authorities:

(a) To establish and maintain accounting procedures for all receipts and disbursements of the Corporation including: (i) the preparation certification and timely presentation of financial accounts, analyses, and statements to authorized personnel; (ii) the selection of accountants and auditors engaged and relied upon by the Corporation; and (iii) the representation of the Corporation with accountants, auditors, examiners, or inspectors;

(b) To receive and disburse funds in the name of the Corporation, including the issuance and acceptance of receipts and vouchers he detemines proper, the collection of receivables, and the investment of funds derived from fees and other revenues in obligations of the United States.

(c) To issue and sign capital stock certificates of the Corporation;

(d) To perform all functions as Personnel Manager as set forth in Title 5, United States Code, and pertinent Civil Service Regulations;

(e) To perform all functions as Contracting Officer of the Corporation with authority to enter into and administer contracts pursuant to Title III of the Federal Property and Administrative Services Act (41 U.S.C. Sec. 251 et seq.) and the Federal Procurement Regulations (Title 41, Code of Federal Regulations) and to make related determinations and findings;

(f) To bill and collect fees due under any contract of insurance issued under section 234(a) of the act or under predecessor programs and authorities similar to those provided for in section 234(a) of the act, to issue written notice of delinquency to any investor who has failed to pay any such fees, and, with the concurrence of the Vice President for Insurance, to provide notice of cancellation of any such contract for failure to pay such fees;

(g) To amend, implement, and consent to the assignment of any investment guaranty issued under section 234(b) of the act, or under predecessor programs and authorities similar to that provided for in section 234(b) of the act and in connection therewith to execute, amend, and implement other related agreements and to exercise all related functions and to make all related approvals and determinations as are deemed necessary or desirable, provided that no such amendment, related agreement, function, approval or determination shall increase the principal amount of the investment guaranty;

(h) To amend and implement loan agreements under section 234(c) of the act and in connection therewith to execute, amend and implement other related agreements and to exercise all related functions and to make all related approvals and determinations as are deemed necessary or desirable, provided that no such amendment, related agreement, function, approval or determination shall increase the principal amount of the loan; and

(i) To sign and certify for the Corporation: (i) disbursement vouchers; (ii) letters of credit; (iii) transfers of funds; (iv) domestic and foreign transportation requests; (v) travel advances; (vi) expense and payroll vouchers; (vii) invoices; (viii) paid notes receivable; and (ix) inter-agency accounting reports.

The authority delegated in subparagraphs 12(a)-(i) may be further delegated.

This redelegation shall be deemed effective as of September 26, 1978 and any and all actions taken pursuant to the authority contained herein subsequent to September 26, 1978 are hereby confirmed and ratified.

RUTHERFORD M. POATS,
Acting President.

[FR Doc. 78-28520 Filed 10-6-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3631]

ALLEGHENY AIRLINES, INC.

Application To Withdraw From Listing and Registration

SEPTEMBER 29, 1978.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Allegheny Airlines, Inc. (the "Company") has been listed for trading on the Amex since November 5, 1951. On May 15, 1978 the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith, such stock was suspended from trading on the Amex. The Company does not wish to bear the expense of maintaining a dual listing on both exchanges and believes that dual listing would fragment the market for its common stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect on the continued listing of such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before October 27, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 28356 Filed 10-6-78; 8:45 am]

[8010-01-M]

[SR-DTC-78-10; Release No. 15193]

DEPOSITORY TRUST CO.

Order Approving Proposed Rule Change

SEPTEMBER 27, 1978.

On July 6, 1978, the Depository Trust Company ("DTC") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change that allows DTC participants to make money payments through DTC when these payments are in connection with, but are not the direct result of, securities transactions in DTC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14951, July 11, 1978) and by publication in the FEDERAL REGISTER (43 FR 30943, July 18, 1978). An amendment clarifying that DTC will make a good faith effort to contact both the payor and payee participants before exercising its authority not to act on the payment instructions was received by letter dated September 22, 1978. No written comments were received by the Commission. The Commission staff requested and received a written opinion from DTC's counsel that the proposed services are authorized by DTC's limited purpose trust company charter.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies, and, in particular, the requirements of section 17A 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 approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-28357 Filed 10-6-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1529; Amendment No. 1]

ARKANSAS

Declaration of Disaster Loan Area

The above numbered Declaration (see 43 FR 44580) is amended in accordance with the President's declaration of September 15, 1978, to include Cross County in the State of Arkansas. The Small Business Administration will accept applications for disaster relief loans from disaster victims in Cross County and adjacent counties within the State of Arkansas. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on November 16, 1978 and for econmic injury until close of business on June 15, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 22, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-28341 Filed 10-6-78; 8:45 am]

[8025-01-M]

[License No. 09/09-5181]

FONG VENTURE CAPITAL CORP.

Termination of License

Notice is hereby given that Fong Venture Capital Corp. (Fong), 2245 Park Towne Circle, Sacramento, Calif. 95803, has surrendered its license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958, as amended (the Act).

Fong was licensed by the Small Business Administration on August 25, 1975.

Under the authority vested by the Act and pursuant to 13 CFR 107.105 (1978), the surrender of Fong's license is hereby approved.

Accordingly, all rights, privileges and franchises derived from the license are hereby terminated.

(Catalog of Federal Domestic Assistance Program Number 59.011, Small Business Investment Companies.)

Dated: September 29, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 28338 Filed 10-6-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1533]

ILLINOIS

Declaration of Disaster Loan Area

Lake County and adjacent counties within the State of Illinois constitute a disaster area as a result of damage caused by heavy rains and flooding which occurred on August 19, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of

business on December 1, 1978, and for economic injury until the close of business on July 2, 1979, at:

Small Business Administration, District Office, 219 South Dearborn Street, Chicago, Ill. 60604.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 2, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-28342 Filed 10-6-78; 8:45 am]

[8025-01-M]

REGION III ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, W. Va., will hold a public meeting at 9 a.m. on Thursday, November 2, 1978, at the Sheraton Inn, 153 West Main Street, Clarksburg, W. Va., to discuss such matters as may be presented by members, the staff of the Small Business Administration, or others present.

For further information, write or call Arthur J. Glick, District Director, U.S. Small Business Administration, 109 North Third Street, Clarksburg, W. Va. 26301, 304-622-6601.

Dated: October 2, 1978.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-28339 Filed 10-6-78; 8:45 am]

[8025-01-M]

REGION IX ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Ariz., will hold a public meeting at 12 Noon on Wednesday, October 25, 1978, at the Fiesta Inn, 2100 S. Priest, Tempe, Ariz., to discuss such matters as may be presented by members, the staff of the Small Business Administration, or others present.

For further information, write or call Stanley D. Goldberg, District Director, U.S. Small Business Administration, 112 North Central Avenue, Phoenix, Ariz. 85004, 602-261-3700.

Dated: October 2, 1978.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-28340 Filed 10-6-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the 23rd meeting of the Board for International Food and Agricultural Development on October 26, 1978.

The purpose of this meeting is to receive and discuss progress reports of the Joint Research Committee, including status of Collaborative Research Support Programs (CRSPs), and discuss activities on contract research programs; to receive and discuss progress reports of the Joint Committee on Agricultural Development, including status of Title XII country projects and programs, eligible universities, baseline studies, and strengthening of universities; to discuss the role of BIFAD/JCAD in participating with A.I.D. in developing country programs; and to hear various other reports on conferences and activities, including the recommendations of the Women in Development seminar and the USDA Land Grant College Extension Retirement Status when involved in Title XII programs.

The meeting will begin at 9:00 a.m., adjourn at 4:30 p.m., and will be held in Room 1107, State Department Building, 22nd and C Streets NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting room.

Dr. Erven J. Long, Director, Office of Title XII Coordination and University Relations, Development Support Bureau, A.I.D., is designated as A.I.D. Advisory Committee representative, at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Deveopment, State Department, Washington, D.C. 20523, or telephone him at 703-235-2243.

Dated: October 3, 1978.

ERVEN J. LONG,
A.I.D. Advisory Committee Representative Board for International Food and Agricultural Development.

[FR Doc. 78-28373 Filed 10-6-78; 8:45 am]

[4710-02-M]

[Delegation of Authority No. 53]

PRINCIPAL DIPLOMATIC OFFICER IN MALAWI AND ZAMBIA

Delegation of Authority

AID Delegation of Authority No. 53, as amended, (29 FR 14860) is amended further, as follows:

1. Insert the following paragraph immediately preceding the last paragraph relating to the effective date of the delegation:

The authority delegated herein may be redelegated to the officer at the post principally responsible for AID activities.

This amendment is effective as of October 1, 1978.

Dated: August 10, 1978.

JOHN J. GILLIGAN,
Administrator.

LESLIE A. GRANT,
Authorized Representative.

[FR Doc. 78-28374 Filed 10-6-78; 8:45 am]

[4710-09-M]

Office of the Secretary

[Public Notice 631]

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Department of State and U.S. Environmental Protection Agency have prepared a Draft Environmental Impact Statement for Incineration of Wastes at Sea Under the 1972 Ocean Dumping Convention. The draft statement is dated October 4, 1978. It considers the environmental effects of amending the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter to establish international regulations and guidelines for the incineration of wastes at sea to be enforced nationally.

Copies of the Draft Environmental Impact Statement may be obtained by writing to William H. Mansfield, Office of Environmental Affairs, Department of State, room 7820, Washington, D.C. 20520. Written comments on the proposed action should be sub-

mitted to Mr. Mansfield no later than November 24, 1978.

For the Secretary of State.

WM. ALSTON HAYNE,
Deputy Assistant Secretary, Environmental and Population Affairs.

OCTOBER 3, 1978.

[FR Doc. 78-28355 Filed 10-6-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIR TRAFFIC CONTROL TOWER

Decommissioning

Notice is hereby given that on October 2, 1978, (2200 local time), the Federal Aviation Administration Part-Time Air Traffic Control Tower at Martha's Vineyard Airport, Martha's Vineyard, Mass., will be decommissioned.

Change to the effective hours of the Martha's Vineyard, Mass. Control Zone, has been reflected in advance by issuance of "Notice to Airman."

(Sections 313(a), 72 Stat. 752; 49 U.S.C. 1354(a) and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Burlington, Massachusetts, on September 28, 1978.

ROBERT E. WHITTINGTON,
Director, New England Region.

[FR Doc. 78-28232 Filed 10-6-78; 8:45 am]

[4910-13-M]

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA) EXECUTIVE COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held November 2, 1978, RTCA Conference Room 261, 1717 H Street NW., Washington, D.C., commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting held August 18, 1978; (2) Special Committee Activity Report for August and September; (3) Chairman's Report of RTCA Administration and Activities; (4) Consideration of Establishing New Special Committees; (5) Approval of Special Committee 122 Reports on Minimum Performance Standards for Airborne ILS Localizer and Glide Slope Receiving Equipment, Airborne Distance Measuring Equipment (DME), and Airborne VOR Receiving Equipment; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; 202-296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on October 2, 1978.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 78-28326 Filed 10-6-78; 8:45 am]

[4910-22-M]

Federal Highway Administration

[FHWA Docket No. 76-9]

BAYONNE BRIDGE, GOETHALS BRIDGE, GEORGE WASHINGTON BRIDGE, AND OUTERBRIDGE

Crossing Tolls

The Federal Highway Administrator received on September 20, 1978, a request from the Port Authority of New York and New Jersey (PANYNJ) for an extension of time by which the PANYNJ was required by the Administrator's decision of August 9, 1977, "to prepare and submit to the Administrator and all parties a comprehensive feasibility study and recommendations for peak-hour charges and the impact that carpooling and commuter discounts have upon congestion." The Administrator had directed the PANYNJ to submit said study within one year from the date of the final order, November 7, 1977, and PANYNJ requests an extension to January 30, 1979.

The request of the PANYNJ which states its reasons for the extension was served by the General Counsel of the PANYNJ on all parties of record.

The purpose of this order is to notify parties of record that if they have objections to the extension of the time for filing the study, such objections must be filed with the Administrator no later than close of business, October 13, 1978. It is noted that the Administrator's order of August 9, 1977, stated that when the study is submitted, an opportunity will be provided for all parties to comment thereon.

Issued this 28th day of September 1978, in Washington, D.C.

KARL S. BOWERS,
Federal Highway Administrator.

[FR Doc. 78-28349 Filed 10-6-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice 726]

ASSIGNMENT OF HEARINGS

OCTOBER 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 139495 (Sub-310), National Carriers, Inc., now being assigned for hearing on November 28, 1978, (1 day), at Dallas, TX in a hearing room to be later designated.

MC 133233 (Sub-58F), Clarence L. Werner d.b.a Werner, Enterprises, now being assigned for hearing on November 29, 1978, (1 day), at Dallas, TX in a hearing room to be later designated.

MC 115841 (Sub-589), Colonial Refrigerated Transportation, Inc., now being assigned for hearing on November 30, 1978, (2 days) at Dallas, TX in a hearing room to be later designated.

MC 100666 (Sub-389F), Melton Truck Lines, Inc., now being assigned for hearing on December 4, 1978, (1 week), at Dallas, TX in a hearing room to be later designated.

MC 111785 (Sub-62F), Burns Motor Freight, Inc., now being assigned for hearing November 14, 1978, (3 days), at Marlinton, WV, in the Main Court room, Marlinton County Courthouse, 9th, Avenue.

MC 136008, (Sub-100F), Joe Brown Co., Inc., and MC 119988 (Sub-152F), Great Western Trucking Co., Inc., and MC 119765 (Sub-55F), Eight Way Xpress, Inc., and MC 115904 (Sub-108F), Grover Trucking Co., and MC 105984 (Sub-20F), John B. Barbour Trucking Co. and MC 74321 (Sub-144F), B.F. Walker, Inc., and MC 68100 (Sub-21F), D.P. Bonham Transfer, Inc., and MC 52709 (Sub-349), Ringsby Truck Lines, Inc., and MC 143059 (Sub-16F), Mercer Transportation, Co., and MC 144875F Barton Trucking, Inc., and MC 120761 (Sub-39F), Newman Bros. Trucking Co., and MC 108119 (Sub-88F), E.L. Murphy Trucking Co., and MC 115603 (Sub-14F), Turner Bros. Trucking Co., Inc., and MC 32882 (Sub-95F), Mitchell Bros. Truck Lines and MC 115931 (Sub-65F), Bee Line Transportation, Inc., and MC 23618 (Sub-26F), McAlister Trucking Co., DBA Matco, and MC 26396 (Sub-182F) Popelka Trucking Co., Inc. DBA The Waggoners, and MC 43867 (Sub-42F), A. Leander McLister Trucking Co., and MC 83539 (Sub-494F), C & H Transportation, Co., Inc. and MC 83835 (Sub-149F) Wales Transportation, Inc., and MC 104523 (Sub-70F), Huston Truck Line, Inc. and MC 109397 (Sub-424F), Tri-State Motor Transit Co., and MC 113459 (Sub-

117F) H.J. Jeffries Truck Line, Inc., and MC 114632 (Sub-146F), Apple Lines, Inc., and MC 115092 (Sub-67F), Tomahawk Trucking, Inc., and MC 115669 (Sub-167F), Dahlsten Truck Line, Inc., and MC 119176 (Sub-20F), The Squaw Transit Co., and MC 124692 (Sub-195F), Sammons Trucking, and MC 125433 (Sub-152F), F-B Truck Line Co. and MC 126555 (Sub-57F), Universal Transport, Inc., and MC 136605 (Sub-53F) Davis Bros. Dist., Inc., and MC 138313 (Sub-32F), Builders Transport, Inc., and MC 144330 (Sub-37F), Utah Carriers, Inc., are assigned for hearing October 10, 1978 at Denver, CO and will be held in the Copper room, U.S. Geological Survey, National Training Center, Building 53, Second Floor, Denver Federal Center.

MC 2835 (Sub-40), Adirindack Transit Lines, Inc., is assigned for hearing October 13, 1978 at Albany, NY and will be held in room 317, Leo W. O'Brien Federal Building, Clinton and North Pearl Streets.

MC 123048 (Sub-386), Diamond Transportation System, Inc., and MC 135562 (Sub-6), O.C.C., Inc., is assigned for hearing October 13, 1978 at Chicago, IL, and will be held at room 1614, Court of Claims, Dirksen Building, 219 South Dearborn Street.

MC 4405 (Sub-573), Dealers Transit, Inc., is assinged for hearing October 16, 1978 at Chicago, IL, and will be held at room 1614, Court of Claims, Dirksen Building, 219 South Dearborn Street.

MC 113855 (Sub-420F), International Transport, Inc., is assigned for hearing October 20, 1978 at Chicago, IL, and will be held at room 2568, Dirksen Building, 219 South Dearborn Street.

MC 109633 (Sub-32F), Arbet Truck Lines, Inc., is assigned for hearing October 17, 1978 at Chicago, IL, and will be held at room 2568, Dirksen Building, 219 South Dearborn Street.

MC 113855 (Sub-407F), International Transport, Inc., is assigned for hearing October 12, 1978 at Chicago, IL, and will be held at room 1614, Court of Claims, Dirksen Building, 219 South Dearborn Street.

MC 134017 (Sub-7F), R. M. Henderson d.b.a. H & M Motor Lines, now being assigned for hearing on November 28, 1978, (1 day), at Atlanta, GA in a hearing room to be later designated.

MC 133659 (Sub-3), Livingston Storage and Transfer Co., Inc., now being assigned for hearing on November 29, 1978, (3 days), at Atlanta, GA in a hearing room to be later designated.

MC 56679 (Sub-87), Brown Transport Corp.—Alternate Regular Route Authority of General Commodities, now being assigned for hearing on December 4, 1978, (2 days), at Atlanta, GA in a hearing room to be later designated.

MC 143296 (Sub-2F), Peach State Bus Lines, Inc., now being assigned for hearing on December 6, 1978, (3 days), at Atlanta, GA in a hearing room to be later designated.

MC 99610 (Sub-17), Ross Neely Express Inc., MC 99610, (Sub-19), Ross Neely Express, Inc., Extension, MI.

MC 99610 (Sub-27), Ross Neely Express Inc., now being assigned for hearing on January 9, 1979, (2 weeks), at Birmingham, AL in a hearing room to be later designated.

MC 138732 (Sub-12F), Osterkamp Trucking, Inc., now being assigned for hearing on December 11, 1978, (2 days), at San Francisco, CA, in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-28495 Filed 10-6-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 4, 1978.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before October 25, 1978.

FSA 43608, Southwestern Freight Bureau, Agent's No. B-772, rates on beet or cane sugar, from Minnesota and North Dakota, to Ft. Smith and Springdale, Ark., in supp. 270 to its Tariff 45-F, ICC 5010, to become effective November 13, 1978. Grounds for relief—market competition.

FSA 43609, Southwestern Freight Bureau, Agent's B-777, rates on rice combined with vegetables, from Baytown and Houston, Tex., to Eastern points, in Supp. 111 to its Tariff 326-C, ICC 5155, to become effective October 31, 1978. Grounds for relief—rate relationships.

FSA 43610, Kawasaki Kisen Kaisha, Ltd., No. 15, rates on general commodities in containers, between ports in the Far East, and rail terminals on the East Coast of the United States, in ICC Nos. 5, 8, 9, and 10 and other tariffs of various agents. Grounds for relief—all water competition.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-28492 Filed 10-6-78; 8:45 am]

[7035-01]

[Notice No. 184]

MOTOR CARRIER TEMBPORARY AUTHORITY APPLICATIONS

OCTOBER 10, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protests must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the applicantion is on file, and can be examined at the office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 531 (Sub-359TA), filed August 7, 1978. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., Houston, TX 77021. Representative: Wray E. Hughes, 4904 Griggs Rd., Houston, TX 77021. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* in bulk, in tank vehicles, over irregular routes, destined to the Republic of Mexico in foreign commerce from Houston, Longview, Texas City, and Freeport, TX, to the TX U.S.-Mexican boundary at Laredo and Brownsville, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Euroquim, USA, Suite 115—Gazo Hillcroft, Houston, TX. Send protests to: District Supervisor John F. Mensing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 720 (Sub-56TA), filed August 7, 1978. Applicant: BIRD TRUCKING CO., P. O. Box 227, Waupun, WI 53968. Representative: Michael J. Wyngaard. 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs in vehicles equipped with mechanical refrigeration* from the facilities of Wiscold, Inc., at or near Milwaukee, Wauwatosa, and Beaver Dam, WI, to points in IA, IL, MN, MB, ND, and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wiscold, Inc., 11400 West Burleigh Street, Milwaukee, WI 53226. Send protests to: Mrs. Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 28307 (Sub-22TA), filed August 7, 1978. Applicant: FREDRICKSON

MOTOR EXPRESS CORP., 3400 North Granham Street, P.O. Box 21098, Charlotte, NC 28206. Representative: Loy J. Foster, P.O. Box 21098, Charlotte, NC 28206. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Glass containers* (1) from Greensboro, NC, over US Hwy 29 to its junction with NC Hwy 14 then over NC Hwy 14 to Eden, NC; (2) from Clemmons, NC, over Interstate Hwy 40 to its junction with US Hwy 29 then over US Hwy 29 to its junction with NC Hwy 14 then over NC Hwy 14 to Eden, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Rd., Room CC516, Charlotte, NC 28205.

MC 48958 (Sub-157TA), filed August 7, 1978. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 E. 51st Ave., P.O. Box 16404, Denver, CO 80216. Representative: Lee E. Lucero, P.O. Box 16404, 510 East 51st Avenue, Denver, CO 80216. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Brass; bronze or copper billets; rods, drawn or extruded; bars, rough cast, cakes, cathodes, ingots, pigs, or slabs*, from the facilities of Inspiration Consolidated Copper Co., located at or near Globe, Inspiration or Miami, AZ, to Hoisington, KS. Applicant does not intend to tack this authority with any other held by it. For 180 days. Supporting shipper: Inspiration Consolidated Copper Co., Mr. Frank E. Hanson, Jr., Traffic Manager, Inspiration, AZ 85537. Send protests to: Roger L. Buchana, District Supervisor, ICC, Bureau of Operations, 492 U.S. Customs House, Denver, CO 80202.

MC 51146 (Sub-619TA), filed August 7, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter* from Des Moines, IA, to Akron, Cincinnati, Cleveland, Columbus, Toledo, Youngstown, Steubenville, Canton, and Dayton, OH; Syracuse and Rochester, NY; and Lansing, Battle Creek, and Wyoming, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Meredith Corp., P.O. Box 1394, Des Moines, IA 50305. (C. Dwight Lammers). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-620TA), filed August 7, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter* from Detroit, MI, to Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Safron Printing, Traffic Consultants, Inc., 44 Brannan Street, San Francisco, CA 94107. (J. E. Saip). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-621TA), filed August 7, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture and furniture parts* from Bassett, VA, to points in WI and the Upper Peninsula of MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Bassett Furniture Industries, 3320 East Crestview Drive, Appleton, WI 54911. (Gard P. Huff). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-622TA), filed August 7, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Waste paper* from Kansas City, MO, to Quincy, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Imperial Paper Stock Co., Inc., 2201 Scott Ave., St. Louis, MO 63103. (John D. Fudemberg). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 96328 (Sub-6TA), filed August 4, 1978. Applicant: ILLINOIS SHORT LINE, INC., 3525 S. Leavitt St., Chicago, IL 60609. Representative: Robert J. Gill, 29 S. LaSalle St., Chicago, IL 60603. Temporary authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *parts, equipment, materials, accessories and supplies used in the manufacture, distribution, maintenance and repair of agricultural equipment, heavy machinery, fork lift trucks and internal combustion engines*, between points in IN, MI, OH, and WI, and the facilities of Allis-Chalmers at Harvey, IL. Restricted to shipments in automobiles. For 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pleas Bennett, Traffic Manager, ALLIS-CHALMERS, P.O. Box 563, Harvey, IL 60426. Send protests to: Lois M. Stahl, Transporting Assistant, Interstate Commerce Commission, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 105886 (Sub-30TA), filed August 7, 1978. Applicant: MARTIN TRUCKING, INC., E. Poland Ave., P.O. Box 67, Bessemer, PA 16112. Representative: Henry M. Wick & David M. O'Boyle, Attorneys at Law, 2310 Grant Bldg., Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground slag*, in bulk, from Neville Island, PA, to Cheylan, WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dravo Corp., Traffic Manager, Natural Resources, One Oliver Plaza, 18th Floor, Pittsburgh, PA 15222. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, PA 15222.

MC 109124 (Sub-48TA), filed August 7, 1978. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Talc or talc tailings*, in bulk, from the facilities of Windsor Minerals, in Windsor County, VT, to the facilities of CertainTeed Corp., at or near Avery, OH, for 180 days. Supporting shipper: CertainTeed Corp., Shelter Materials Group, P.O. Box 860, Valley Forge, PA 19482. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations—ICC 313 Feder-

al Office Bldg., 234 Summit St., Toledo, OH 43604.

MC 111302 (Sub-136TA), filed August 7, 1978. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, Knoxville, TN 37919. Representative: David A. Petersen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting, for 180 days: *Liquid citric acid*, in bulk, in tank vehicles from the facilities of Miles Laboratories in Elkhart, IN to New Johnsonville, TN. Supporting shipper: Miles Laboratory, 1127 Myrtle Street, Elkhart, IN 46514. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 118535 (Sub-126TA), filed August 7, 1978. Applicant: TIONA TRUCK LINES, INC., 111 South Prospect, Butler, MO 64730. Representative: Tom Ventura (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fish meal*, from Cameron, Dulac, Empire, Holmwood, and Morgan City, LA, to points in AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilbur Ellis Co., Little Rock, AR 72205. Send protests to: DS John V. Barry, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 123255 (Sub-171TA), filed August 7, 1978. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Avenue, Newark, OH 43055. Representative: C. F. Schnee, Jr., Vice President—Traffic, 140 Everett Avenue, Newark, OH 43055. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the facilities of the Mead Corp., at Lynchburg, VA, to Marine City, Marshall, Mount Clemens, Pontica, Richmond, River Rouge, and Utica, MI, and Wapakoneta, OH, for 180 days. Supporting shipper: The Mead Corp., Courthouse Plaza NE., Dayton, OH 45463. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 124078 (Sub-848), filed August 7, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, from the facilities of Georgia Power Plant Wansley, at or near Roopville, GA, to points in AL, FL, LA, MA, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amax Resource Recovery Systems, Inc., 5600 Roswell Road NE., Atlanta, GA 30342. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 127303 (Sub-46TA), filed August 7, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 63126. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Milwaukee, WI, to points in WA, OR, ID, MT, WY, CO, ND, SD, NE, KS, MN, IA, MO, IL, MI, IN, KY, and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ed Geurts, Assistant Corporation Traffic Manager—Operations, Miller Brewing Co., 3939 West Highland Boulevard, Milwaukee, WI 53208. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 129788 (Sub-11TA), filed August 7, 1978. Applicant: NASS TRUCK LINES, INC., an Indiana corporation, Box "H," Wenona, IL 61377. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. Authority sought to operate as a *commn carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials*, from LaCrosse, WI to Champaign, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rear & Clark Distributing Co., 804 North Elm, Champaign, IL 61820. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, room 1386, Chicago IL 60604.

MC 139495 (Sub-374TA), filed August 7, 1978. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, Sullivan & Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, in vehicles equipped with mechanical refrigeration, from facilities of FFV at or near Richmond, VA, to points in MA, CT, RI, and ME, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Interbake Foods, Inc., P.O. Box 27487 Richmond, VA 23261. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building Wichita, KS 67202.

MC 140241 (Sub-27TA), filed August 1, 1978. Applicant: DALKE TRANSPORT, INC., P.O. Box 7, Moundridge, KS 67107. Representative: Larry E. Gregg, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precut log buildings, knocked down, and log buildings, materials and supplies*, between Claremore, OK and Red River, NM, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Beaver Log Homes, Division of Chisum Industries, Inc., P.O. Box 1145, Claremore, OK 74107. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 142672 (Sub-28TA), filed August 7, 1978. Applicant: DAIVE BENEUX PRODUCE AND TRUCKING, INC., P.O. Box Drawer F, Mulberry, AR 72947. Representative: Don Garrison 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electrical appliances, equipment and parts*, as defined by the Commission in Descriptions in Motor Carrier Certificates, 61 MCC 283 Appendix VII, and materials used in the manufacture thereof (except commodities in bulk). From the facilities of Gibson-Metalux Corp., at or near Americus, GA to points in AL, AR, CO, CT, DC, DE, IA, IL, IN, KS, KY, MA, MD, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, WV, and WY, for 180 days. Supporting shipper: Gibson-Metalux Corp. P.O. Box 1207, Americus, GA 31709. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142703 (Sub-9TA), filed August 7, 1978. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 West Third Street, P.O. Box 14072, Cincinnati, OH 45214. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in

Practices of Motor Common Carriers of Household Goods, 17 MCC 467 commodities requiring special equipment, commodities in bulk, and those injurious or contaminating to other lading, between Cincinnati, OH, on the one hand, and, on the other, points in KY. Restricted to transportation of shipments having prior or subsequent rail or water movement, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 12 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations-ICC, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 142703 (Sub-10TA), filed August 7, 1978. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 West Third Street, P.O. Box 14072, Cincinnati, OH 45214. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 MCC 467, commodities requiring special equipment, commodities in bulk, and those injurious or contaminating to other lading, between Louisville, KY, on the one hand, and, on the other, points in KY. Restricted to transportation of shipments having prior or subsequent rail or water movement, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 8 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations-ICC, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 142703 (Sub-11TA), filed August 7, 1978. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 West Third Street, P.O. Box 14072, Cincinnati, OH 45214. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 MCC 467, commodities requiring special equipment, commodities in bulk, and those injurious or contaminating to other lading, between Louisville, KY, on the one hand, and, on the other, points in IN. Restricted to transportation of shipments having prior or subsequent rail or water movement, for 180 days. Supporting shipper: There are approximately 13 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations-ICC, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 143236 (Sub-17TA) filed August 7, 1978. Applicant: TIGER TRANSPORTATION, INC., 115 Jacobus Avenue, South Kearny, NJ 07032. Representative: Jay Schiffres, 1001 Connecticut Avenue, NW., Washington, DC 20036. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Coffee, tea, cocoa and related nondiary products*, between the facilities of Weshsler Coffee Corp., at or near Moonachie, NJ, and points in CA and points East of and including: MN, IA, MO, CO, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wechsler, 10 Empire Boulevard, Moonachie, NJ. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 143456 (Sub-2TA) filed August 2, 1978. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine Street, Barre, VT 05641. Representative: William L. Rossi, Essex Green, Apt. C-1, Essex, VT 05451. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Stone, stone working supplies, material and machinery*. Between the plantsites and quarries of Rock of Ages Corp. and Rock of Ages Building Granite Corp. in VT and NH, under a continuing contract or contracts with Rock of Ages Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating author< ity. Supporting shipper: Rock of Ages Corp., Rock of Ages Building Granite Corp., Barre, VT 05641. Send protests to: District Supervisor David A. Demers, Interstate Commerce Commission, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-28493 Filed 10-6-78; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 62-A; Rev. S.O. No. 1252]

CHESAPEAKE & OHIO RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 62 (The Chesapeake & Ohio Railroad Co.), and good cause appearing therefor:

It is ordered, I.C.C. Order No. 62 is vacated effective at 8:30 a.m., October 2, 1978.

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 shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 2, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-28488 Filed 10-6-78; 8:45 am]

[7035-01-M]

[Rev. I.C.C. Order No. 65-A; Rev. S.O. No. 1252]

CP RAIL AND DETROIT, TOLEDO & IRONTON RAILROAD CO.

Rerouting and Diversion Traffic

Upon further consideration of Revised I.C.C. Order No. 65 (CP Rail and Detroit, Toledo & Ironton Railroad Co.), and good cause appearing therefor:

It is ordered, Revised I.C.C. Order No. 65 is vacated, effective at 8:30 a.m., October 2, 1978.

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 shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 2, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-28489 Filed 10-6-78; 8:45 am]

[7035-01-M]

[Rule 19, Ex Parte No. 241; Rev. Exemption No. 152-A]

EXEMPTION UNDER PROVISIONS OF MANDATORY CAR SERVICE RULES

Upon further consideration of Revised Exemption No. 152 issued September 29, 1978.

It is ordered, Under authority vested in me by Car Service Rule 19, Revised Exemption No. 152 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is vacated and set aside.

This order shall become effective at 12:01 a.m., October 5, 1978.

Issued at Washington, D.C., October 2, 1978.

INTERSTATE COMMERCE COMMISSION
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-28491 Filed 10-6-78; 8:45 am]

[7035-01-M]

[Notice No. 112]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before November 9, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicant's representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77739, filed July 3, 1978. Transferee: Anthony D. Fiamingo, d.b.a. Fiamingo Moving & Storage Co., R.D. Number 3, Box 678, Mansfield, PA 16933. Transferor: W. D. Leeds Storage Warehouse, Inc., 510 Fifth Avenue, Williamsport, PA 17701. Authority sought for purchase by transferee of operating rights of transferor as set forth in Certificate No. MC-22304, issued August 20, 1968, as follows: Doors, door parts, and accessories, uncrated, between Williamsport, PA on the one hand, and, on the other, points in CT, RI, NJ, DE, MD (except in a specified portion), VA, IN, NC, WV, OH (except in the Cleveland, OH Commercial Zone), and the DC; doors and millwork between Williamsport, PA on the one hand, and, on the other, points in NY; new furniture between Williamsport, PA on the one hand, and, on the other, points in NJ; radiator covers, boiler jackets, and enclosures for steam equipment, between Williamsport, PA on the one hand, and, on the other, points in NY, NJ, CT, MD, DE, and the DC; and household goods between Williamsport, PA and points in PA within 25 miles of Williamsport on the one hand, and, on the other, points in RI, CT, NY, MD, DE, OH, IN, NC, and the DC. This application is directly related to a gateway elimination proceeding in No. MC-126900 Sub 1. Transferee presently holds authority in No. MC-126900. Application for temporary authority under Section 210a(b) has not been filed.

REPUBLICATION [1]

MC-FC-77789, filed July 28, 1978. Transferee: Walter J. Lubinski, and Kenneth E. Kocher, a partnership, d.b.a. L & K Transportation, RD Number 4, Box 199, Dallas, PA 18612. Transferor: Russell Parsons, RD Number 5, Box 98, Dallas, PA 18612. Representative: S. Berne Smith, Attorney at Law, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates No. MC-136480 and Sub-No. 1) issued August 20, 1975 and October 7, 1976 respectively as follows: *Foodstuffs* (except in bulk) from Penn Yan, Long Island City, Maspeth, and New York, NY, Pridgeton, East Rutherford, Elizabeth, and Vineland, NJ, and La Grange, IL, to the warehouse facilities of Robert Sosnick located at Los Angeles and South San Francisco, CA, Portland, OR, and Seattle, WA. *Wax candles,* from Newburgh and Brooklyn, NY, and Farmingdale, NJ, to the warehouse facilities of Robert Sosnick located at Los Angeles and South San Francisco, CA, Portland, OR, and Seattle, WA. *Wine (except in bulk), from points in the New York, NY, Harbor Limits as defined in 49 CFR 1070.1(a) to the warehouse facilities of Robert Sosnick located at Los Angeles and South San Francisco, CA, Portland, OR, and Seattle, WA. Anthracite filter media,* from points in Wyoming, Lackawanna, and Luzerne Counties, PA, to points in that part of the United States lying on and west of a line beginning at the mouth of the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the United States and Canada. *Foodstuffs* (except in bulk and except frozen), from Farmingdale, NJ, to the facilities of J. Sosnick & Son at Los Angeles and South San Francisco, CA, Portland, OR, and Seattle, WA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210(b).

H. G. HOMME, Jr.,
Acting Secretary.

MC-FC-77800, filed August 3, 1978. Transferee: Lamp Delivery Service Corp. Route 3, North Brady Street Road, Davenport, IA 52804. Transperor: Central Delivery Service, Inc., Route 3, North Brady Street Road, Davenport, IA 52804. Representative: Patrick H. Smyth, Esq., Suite 521, 19 South LaSalle Street, Chicago, IL 60603. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit Nos. MC 139080 and Sub 2, issued November 1, 1974 and July 21, 1976, respectively, as follows: Such merchandise as is dealt in by retail department stores, and equipment, materials and supplies, from specified points in IA and IL to specified points in IL and IA, under contract with Montgomery Ward & Co., Inc. and home, laundry and toilet care preparations, cosmetics, cookware, cutlery and food supplements, from Davenport, IA to points in IA, under contract with Amway Corp. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77822, filed August 29, 1978. Transferee: Molerway Freight Lines,

[1] The purpose of this republication is to reflect Wyoming County, PA as an origin point, and to indicate the proper commodity description of Anthracite filter media.

Inc., 2707 Beartooth Drive, Billings, MT 59102. Transferor: Bill G. Carr and Phyllis R. Carr, d.b.a. Arrowhead Transportation, a partnership, Billings, MT 59102. Representative: Larry D. Herman, Esq., 111 West Main, Laurel, MT 59044. Authority sought for purchase by transferee of operating rights of transferor as set forth in Certificate No. MC-116698 Sub 1, issued May 19, 1965, as follows: General commodities, with exception, over specified routes, between Billings and Absarokee, MT, and between Roundup and Billings, MT. Transferee presently holds authority in MC-135621 Sub 2. Application for temporary authority under section 210a(b) was denied on September 8, 1978.

MC-FC-77823 filed August 24, 1978. Transferee: Midland Transportation Co., d.b.a. Midland Moving, 1706 East Main, Marshalltown, IA 50158. Transferor: Modern Moving and Storage, Inc., 1706 Hillcrest Road, Marshalltown, IA, 50158. Representative: Gerald E. Mattox, 1902 Edgebrook, Marshalltown, IA 50158. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate Nos. MC-135081 (Sub No. 1), and MC-135081 (Sub No. 2), issued May 15, 1972 and May 21, 1973, respectively as follows: Used household goods, between points in Douglas, Sarpy, Dodge, Washington, Saunders, Lancaster, Cass, and Otoe Counties, NE, and points in Iowa; Petroleum products and gasoline filling station supplies and equipment, between Waterloo, IA, and Monmouth, IL; household goods as defined by the Commission, between points in IL and IA; Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77828, filed August 30, 1978. Transferee: Ace Moving & Storage Inc., 600 East Broad Street, Texarkana, AR 75502. Transferor: Prescott Transfer & Storage, Inc., Walnut & West 2nd Street, Prescott, AR 71857. Representative: Herby Branscum Jr., Attorney at Law, P.O. Box 587, Perryville, AR 72126. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates No. MC-106836 and MC-106836 (Sub No. 2), issued October 10, 1952 and December 27, 1960, respectively, as follows: *Household goods*, between points within 50 miles of Prescott, AR, on the one hand, and, on the other, points in TX, LA, MS, TN, OK, MO, and AR, and related E-1, published June 2, 1975 and effective June 17, 1978. Transferee presently holds no authority from this Commission. Application has not been filed for authority under section 210a(b).

MC-FC-77836 filed August 24, 1978. Transferee: Lowther Trucking Co., Inc., 521 South Anderson Road, Rock Hill, SC, 29730. Transferor: Overcash Transfer, Inc., 21 ByPass, Rock Hill, SC, 29730. Representative: Lawrence E. Lindeman, Woods, Villalon, Hollengreen & Lindeman, Suite 1032 Pennsylvania Building, Pennsylvania Avenue & 13th Street, NW., Washington, DC, 20004. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit Nos. MC-52781 and MC-52781 (Sub-No. 2), issued May 1, 1963, and December 6, 1973, respectively, as follows: Pipe, pipe fittings, and such materials, supplies, and equipment as are used in the installation and maintenance of sprinkler, heating, and power piping system, and such tools and equipment as are used for installing and maintaining the aforementioned installations, between Charlotte, NC, on the one hand, and, on the other, points in NC and SC within 150 miles of Charlotte, NC, between Charlotte, NC, on the one hand, and, on the other, points in SC, except those within 150 miles of Charlotte, NC, and points in VA restricted to a transportation service to be performed under special and individual contracts or agreement with persons (as defined in section 203(a) of the Act) who are engaged in the installation and maintenance of sprinkler, heating, and power piping systems, for the transportation of the commodities indicated and in the manner specified; Pipe, pipe fittings, and materials, supplies, and equipment, used in the installation and maintenance of sprinkler, heating, and power piping system, between points in NC, SC, VA, GA, (except Chatham County), AL (except (a) between points in and on the Tennessee River and Ragland, AL, on the one hand, and, on the other, points in GA and TN, and (b) from points in Talladega County AL), and TN (except (a) from points in Roane County and (b) between points on the Mississippi River and Tennessee River, on the one hand, and, on the other points in AL and GA). Restricted to a transportation service to be performed, under a continuing contract, or contracts, with the following shippers: I.T.T. Grinnell Corp, of Providence, RI; I.T.T Grinnell Industrial Piping, Inc.; Grinnell Fire Protection Systems Co., Inc.; General Supply & Equipment Corp., of Charlotte, NC; and Monarch Sprinkler Co., of Charlotte, NC; Lumber (except plywood and veneer), from points in SC, to points in NC, restricted to a transportation service to be performed, under a continuing contract, or contracts, with Forest Lumber Company, Inc., of Charlotte, NC. Transferee is presently authorized to operate as a common and contract carrier under Certificate No. MC-114098 and Permit No. MC-115789.

MC-FC-77853, filed September 19, 1978. Transferee: Surface Transportation Co., Inc., 125 South Van Brunt Street., Englewood, NJ 07631.Transferor: Lapadula & Villani, Inc., P.O. Box 158, Cedarhurst, NY 11516. Representatives: Roy Jacobs, Esq. Attorney for Tranferor 550 Mamaroneck Avenue, Harrison, NY 10528. Ronald I. Shapss, Esq., Attorney for Transferee, 450 Seventh Avenue, New York, NY 10001. Authority sought for purchase by transferee of a portion of the operating rights of transferor, set forth in Certificate No. MC-42984, issued May 19, 1970, as follows: *Interior woodwork, machinery, and building materials*, between New York, NY and points within 50 miles of Columbus Circle, NY in CT, NJ, and NY. *General commodities*, with the usual exceptions, between points in Union County, NJ, on the one hand and, on the other, New York, NY, and *machinery, pipe and pipe fittings*, between points in Union County, NJ on the one hand, and, on the other points in CT, MD, MA, NY, PA and RI. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77854 filed September 18, 1978. Transferee: Dial Transfer, Inc., 756 North Fourth Street, Minneapolis, MN, 55403. Transferor: Mid-North Furniture Transport, Inc., 1175 Cleveland Avenue South, St. Paul, MN, 55116. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN, 55403. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC-138853, issued September 26, 1973, as follows: New furniture, from St. Paul, MN, to points in MN, ND, and SD restricted to the transportation of shipments having a prior movement by rail. Transferee is presently authorized to operate as a common carrier under Certificate No. MC-119293. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77857, filed September 18, 1978. Transferee: The Kennedy Co., Inc., d.b.a. Kennedy Storage Co., Route 295 & Hartford Road, Mount Laurel, NJ 08054. Transferor: J.C. Services, Inc., 1621 Loretta Avenue, Feasterville, PA 19047. Representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Road & Cottman Street, Jenkintown, PA 19046. Authority sought for purchase of the operating rights of the transferor set forth in Certificate No. MC-9975, issued December 24, 1975, as follows: *Household goods*, between points in the Philadelphia, PA commercial zone, on the one

hand, and, on the other points in PA, NJ, NY, DE, MD, and DC. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210 a(b).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-28494 Filed 10-6-78; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 74-A; Rev. S.O. No. 1252]

REROUTING TRAFFIC

To all railroads. Upon further consideration of ICC Order No. 74, and good cause appearing therefor:

It is ordered, That:

ICC Order No. 74 is vacated, effective at 8:30 a.m., October 2, 1978.

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 shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 2, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-28490 Filed 10-6-78; 8:45 am]

[1505-01-M]

[Decision Vol. No. 31]

DECISION-NOTICE

Correction

FR Doc. 78-26195, appearing at page 42070 in the issue of Tuesday, September 19, 1978, is corrected as follows:

1. On page 42072, first column, second full paragraph, first line, "MC 995540 (Sub-1030F)" should read "MC 95540 (Sub-1030F)".

2. On page 42073, third column, first full paragraph, "MC 116254 (Sub-21F)" is changed to read "MC 116254 (Sub-211F)".

3. Also on page 42073, the third column, in the second full paragraph, the first line, "MC 177068 (Sub-100F)" should read "MC 117068 (Sub-100F)".

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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[6320-01-M]

1

[M-168 Amdt. 3; Oct. 3, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the October 5, 1978, meeting agenda.

TIME AND DATE: 10 a.m., October 5, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 6b. Dockets 33083, 32294; Application for exemption by Air Florida to provide scheduled service from Florida to points in the Bahamas pending the outcome of the *U.S.-Bahamas Service Investigation* (BIA, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Existing service in the Florida-Bahamas Out Islands markets has been recently cut back and may be further disrupted, because of financial difficulties of the principal incumbent, Mackey International Airlines. Mackey has been named in a complaint for default on a bank loan exceeding $1,000,000 and the creditor is seeking foreclosure on Mackey aircraft. Furthermore, the Securities and Exchange Commission last week suspended Mackey stock from trading for 10 days.

The proposed exemption operations are imminent—Air Florida is ready and willing to institute service immediately, to fill the current void in Out Island service, and prepare for peak winter season traffic. Accordingly, the following Members have voted that agency business requires the addition of item 6b to the agenda and that no earlier announcement of this addition was possible:

Chairman, Alfred E. Kahn
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2040-78 Filed 10-5-78; 9:10 am]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., Wednesday, October 11, 1978.

PLACE: 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Proposed Administrative Action/Enforcement matter.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2042-78 Filed 10-5-78; 9:10 am]

[6351-01-M]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., October 13, 1978.

PLACE: 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2043-78 Filed 10-5-78; 9:10 am]

[6351-01-M]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 11, 1978.

PLACE: 2033 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Leverage policy discussion.
Registration denial procedures.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2044-78 Filed 10-5-78; 9:10 am]

[6570-06-M]

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m., (eastern time), Tuesday, October 10, 1978.

PLACE: Chairman's Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Bulding, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Freedom of Information Act Appeal No. 78-7-FOIA-150, concerning a request by a party filing a charge of discrimination for access to the investigative file after his right to bring a title VII civil action has expired.
2. Allocation of fiscal year 1979 funds for State and local agency charge resolution contracts.
3. Transfer of 846 charges from the Houston District Office to the Dallas District Office for processing.
4. Proposed procedures to implement Executive Order 12044 and final report required by that order.
5. Proposed EEO complaint appeals procedures for Federal employees.
6. Report on Commission operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

NOTE.—Any matter not discussed or concluded may be carred over to a later metting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued October 3, 1978.

[S-2036-78 Filed 10-5-78; 9:10 am]

[6712-01-M]

6

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, October 5, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following item has been added:

Agenda, Item No., and Subject

Complaints and Compliance—1—Complaint, filed on July 26, 1978, by the Younger Campaign Committee against 21 California television and 5 California radio stations.

If additional information is required concerning this meeting it may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: October 3, 1978.

[S-2037-78 Filed 10-5-78; 9:10 am]

[6712-01-M]

7

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, October 5, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following items have been deleted.

Agenda, Item No., and Subject

General—5—Applications for review of staff ruling partially granting the Freedom of Information Act request jointly filed by Classical Radio for Connecticut, Inc., and the WTIC-FM Listeners' Guild.

Cable Television—4—Petition for reconsideration filed by People's Cable Co., Henrietta, N.Y.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: October 3, 1978.

[S-2038-78 Filed 10-5-78; 9:10 am]

[6715-01-M]

8

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, October 12, 1978, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of the meeting open to the public and portions of the meeting closed to the public.

MATTERS TO BE CONSIDERED:

Portions of the meeting open to the public:

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory Opinions: AO 1978-69, AO 1978-73, AO 1978-62, AO 1978-77, AO 1978-78, and AO 1978-39.
Earmarked contributions.
Presidential campaign disclosure form.
Report to FEC on Advisory Panel Meetings.
Appropriations and budget.
Budget execution report.
Computer contract procurement.
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Reports from division heads.
Recordkeeping and reporting of particulars for expenditures—Presidential candidates and authorized committees.
Classification Actions.
Routine administrative matters.

Portions of the meeting closed to the public:

Audit reports, compliances, and personnel.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-2047-78 Filed 10-5-78; 3:23 pm]

[6740-02-M]

9

OCTOBER 14, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: October 11, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C., Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

POWER AGENDA—165TH MEETING, OCTOBER 11, 1978, REGULAR MEETING

CAP-1. Docket Nos. ER78-293, ER78-298, and ER78-302, Illinois Power Co.
CAP-2. Docket No. ER78-608, Bangor Hydro-Electric Co.
CAP-3. Docket No. ER78-609, Cliffs Electric Service Co.
CAP-4. Docket Nos. ER78-35, et al., Connecticut Light & Power Co., Hartford Electric Light Co.
CAP-5. Docket No. ID-1823, Robert P. Reuss.
CAP-6. Docket No. ID-1758, Charles T. Fisher III. Docket No. ID-1759, Richard C. Gerstenberg.

I. ELECTRIC RATE MATTERS

ER-1. Docket No. ER78-489, Arkansas-Missouri Power Co.
ER-2. Docket No. ER78-511, Public Service Co. of Oklahoma.
ER-3. Docket No. ER78-388, Missouri Power & Light Co.
ER-4. Docket Nos. ER78-337 and ER78-338, Public Service Co. of New Mexico.
ER-5. Docket No. ER77-533, Louisiana Power & Light Co.
ER-6. Docket Nos. ER76-304, ER76-317, and ER76-498, New England Power Co.
ER-7. Docket No. ER77-311, Utah Power & Light Co.

II. LICENSE PROJECT MATTERS

P-1. Project No. 2774, Modesto and Turlock Irrigation Districts and city and county of San Francisco.

GAS AGENDA—165TH MEETING, OCTOBER 11, 1978, REGULAR MEETING

CAG-1. Docket No. RP78-91, West Texas Gathering Co.
CAG-2. Docket No. RP72-110, Algonquin Gas Transmission Co.
CAG-3. Docket No. RP77-13, Arkansas Louisiana Gas Co.
CAG-4. Docket No. RI78-24, Northern Pump Co.
CAG-5. Docket No. CI78-713, Champlin Petroleum Co.
CAG-6. Docket No. CI78-68, Exxon Corp.
CAG-7. Docket No. CI73-750, Chevron U.S.A., Inc., et al.
CAG-8. Docket No. CI75-608, et al., Skelly Oil Co.
CAG-9. Docket No. CI70-129, et al., Cities Service Co., et al.
CAG-10. Docket No. CP78-420, Louisiana-Nevada Transit Co.
CAG-11. Docket No. CP78-265, Panhandle Eastern Pipe Line Co.
CAG-12. Docket No. CP78-336, Trunkline Gas Co.
CAG-13. Docket Nos. CP76-241 and CP76-242, Transcontinental Gas Pipeline Corp.
Docket No. CP76-249, Southern Natural Gas Co.
Docket No. CP76-270, Gas Gathering Corp.
Docket No. CP77-156, Natural Gas Pipeline Co. of America.
Docket No. CP77-185, Texas Eastern Transmission Corp., National Fuel Gas Supply Corp.

CAG-14. Docket No. CP76-299, Tennessee Gas Pipeline Co.
CAG-15. Docket No. CP78-454, United Gas Pipeline Co.
CAG-16. Docket No. CP77-459, Midwestern Gas Transmission Co.
Docket No. CP77-520, Tennessee Gas Pipeline Co., a division of Tenneco Co., Northern Natural Gas Co.
Docket No. CP78-16, Tennessee Gas Pipeline Co., a division of Tenneco, Inc.
CAG-17. Docket No. CP78-189, Texas Eastern Transmission Corp.
CAG-18. Docket No. CP78-136, Transcontinental Gas Pipe Line Corp.

I. PIPELINE RATE MATTERS

RP-1. Docket Nos. RP73-3 (PGA78-3), et al., Transcontinental Gas Pipe Line Corp.
RP-2. Docket No. RP76-31, Louisiana-Nevada Transit Co.
RP-3. Docket Nos. RP74-89 and RP73-35 (AP76-1), Trunkline Gas Co.

II. PIPELINE CERTIFICATE MATTERS

CP-1. Docket No. IN78-2, Florida Gas Transmission Co., Amoco Production Co., Florida Power & Light Co.
CP-2. Docket No. CP77-477, Panhandle Eastern Pipe Line Co.
CP-3. Docket No. CP78-533, Midwestern Gas Transmission Co., Truckline Gas Co., and Panhandle Eastern Pipeline Co.

KENNETH F. PLUMB,
Secretary.

[S-2046-78 Filed 10-5-78; 2:11 pm]

[7545-01-M]

10

NATIONAL LABOR RELATIONS BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 42853, published September 21, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 3 p.m., Friday, October 6, 1978.

CHANGES IN THE MEETING: The time of the meeting has been changed to 2 p.m.

Dated: Washington, D.C., October 4, 1978.

By direction of the Board.

GEORGE A. LEET,
Associate Executive Secretary, National Labor Relations Board.

[S-2039-78 Filed 10-5-78; 9:10 am]

[7590-01-M]

11

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Tuesday, October 10, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

TUESDAY, OCTOBER 10

10 a.m.—1. Discussion of personnel matter (approximately 1 hour, closed—exemption 6). 2. Discussion of EDO testimony of July-August, 1977 (approximately 1 hour, closed—exemption 6).
2. p.m.—1. Discussion of women's class action suit (approximately 1 hour, public meeting). 2. Continuation of morning meetings (approximately 1 hour, if necessary, closed—exemption 6). 3. Discussion of review of staff motion to withdraw its petition for review of ALAB-399, and review of ALAB-487, Consolidated Edison of New York, and related matters (approximately 1 hour, closed—exemption 10).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

OCTOBER 3, 1978.

[S-2045-78 Filed 10-5-78; 9:48 am]

[8010-01-M]

12

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 9, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, October 10, 1978, at 10 a.m. An open meeting will be held on Thursday, October 12, 1978, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 10, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of unjunctive actions.
Report of investigation.
Settlement of injunctive action.
Other litigation matters.

The subject matter of the open meeting scheduled for Thursday, October 12, 1978, at 10 a.m., will be:

1. Consideration of a Freedom of Information Act appeal of First National Finance Corp. ("First National"). First National has appealed the Freedom of Information Officer's determination that certain limited materials in the Comission's files would not be disclosed based upon exemption 5 to the Freedom of Information Act, 5 U.S.C. 552(b)(5). For further information, please contact Michael K. Wolensky at 202-755-1342.

2. Consideration of the transmittal to Senator Harrison A. Williams, Jr., of a Preliminary Report Concerning Market Inventory Funds, together with exhibits, prepared by the Division of Market Regulation, and a transmittal letter to Senator Williams from Chairman Harold M. Williams. For further information, please contact Roger D. Blanc at 202-755-1390.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Gary Matsko at 202-755-1133.

OCTOBER 3, 1978.

[S-2041-78 Filed 10-5-78; 9:10 am]

federal register

TUESDAY, OCTOBER 10, 1978
PART II



FEDERAL COMMUNICATIONS COMMISSION

■

FEE REFUNDS AND FUTURE FCC FEES

Inquiry

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47CFR Part 1]

[Docket No. 78-316; FCC 78-695]

FEE REFUNDS AND FUTURE FCC FEES

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The FCC is beginning an inquiry into the refunding of fees collected between August 1, 1970, and January 1, 1977, and a future fee program. The FCC is taking this action in response to several decisions by the U.S. Court of Appeals for the District of Columbia Circuit.

DATES: Comments on the refund section of this notice of inquiry are due November 8, 1978. Comments on a future FCC fee schedule are due by January 8, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Campbell, Chief, Financial Management Division, Federal Communications Commission, Washington, D.C. 20554, telephone 202-632-7194 (information on the refund section of the notice of inquiry).

Douglas W. Webbink, Office of Plans and Policy, Federal Communications Commission, Washington, D.C. 20554, telephone 202-632-6312 (information on the future fee schedule section of the notice of inquiry).

Adopted: September 27, 1978.

Released: October 6, 1978.

By the Commission: Commissioner Quello absent; Commissioner Washburn issuing a separate statement; Commissioner White concurring in part and dissenting in part and issuing a statement.

A. Background

1. On January 1, 1977, the Commission suspended the collection of all license fees following several court decisions by the U.S. Court of Appeals for the District of Columbia Circuit, which held that previous fee schedules were unlawful and which instructed the Commission to recalculate fees assessed between 1970 and 1976 and to make appropriate refunds.[1] This notice has three basic purposes. First: It explains the current status of the refund program and initiates procedures for public input into that process. Secondly: It is intended to begin the groundwork that will underlay a new fee schedule, based on the existing law for which we hope to be able to initiate a rule making proceeding in 1979. Finally: Given a possibility of new legislation, we are considering ways to establish spectrum usage charges that would not be constrained to recover the Commission's cost of providing services, but rather would reflect the value conferred on our licensees through their use of a publicly owned scarce resource. Thus, the final section of this notice raises questions concerning charging the fair market value for use of the spectrum. Prior to addressing these issues, however, we believe it would be advantageous to review those events that have led to the issuance of this Notice.

2. The Commission's authority to impose fees stems from title V of the Independent Offices Appropriations Act of 1952, 31 U.S.C. 483a, which provides that:

> * * * any work, service, [or] benefit * * * performed or issued by any Federal agency * * * shall be self-sustaining to the full extent possible, and [each agency] is authorized * * * to prescribe therefore such fee, charge, or price * * * as [it] shall determine * * * to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts * * *.

1963 SCHEDULE OF FEES

3. In 1963, the Commission enacted its first schedule of fees, which provided comprehensive fees in all areas of Commission regulation at the time. *Schedule of Fees*, 34 FCC 811 (1963). This schedule adopted what could generally be described as nominal fees—the maximum single fee being $100—intended to recoup about 25 percent of the Commission's costs. On judicial review, the seventh circuit affirmed the Commission's action. *Aeronautical Radio, Inc.* v. *United States*, 335 F. 2d 304 (7th Cir. 1964), *cert. denied*, 379 U.S. 966 (1965).

1970 SCHEDULE OF FEES

4. Consistent with its policy of continuing review of its fee schedule, and in line with congressional directives that the fees be "further reviewed and adjusted upward with the objective of assuring that the activities of the Commission are more nearly self-sustaining," [2] the Commission adopted a schedule of fees in 1970 that was designed to recover a total amount that approximated the Commission fiscal year 1971 budget. *Schedule of Fees, Report and Order*, 23 FCC 2d 880 (1970); *Schedule of Fees, Memorandum Opinion and order*, 28 FCC 2d 139 (1971). That schedule became effective on August 1, 1970. It reflected a broad revision of the existing fees, an imposition of fees in new areas in which the Commission had only recently exercised jurisdiction, (e.g., cable television and equipment testing and approval) and the levying of fees in a manner that more accurately reflected the "value to the recipient" factor of title V (e.g., the use of annual fees based on a station's commercial rates in place of renewal application fees in the broadcast services, the calculation of assignment or transfer grant fees which reflected the value the parties to the transaction placed on the sale and the use of annual fees for cable television systems based on the number of subscribers.)

5. Judicial review was sought of the Commission's action and in July 1972 the fifth circuit affirmed the Commission in all respects. *Clay Broadcasting Corp.* v. *United States*, 464 F. 2d 1313 (5th Cir. 1972). Shortly after the fifth circuit's decision, the District of Columbia Circuit set aside an order of the FPC promulgating annual fees for electric and gas companies under the same statutory authority as the FCC's. *New England Power Co.* v. *Federal Power Commission*, 467 F. 2d 425 (D.C. Cir. 1972).

6. Because of an apparent conflict between the two decisions, the Supreme Court granted petitions for certiorari. In opinions handed down in March 1974, *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 316 (1974) and *Federal Power Commission* v. *New England Power Co.*, 415 U.S. 345 (1974), the Supreme Court reversed the decision in *Clay Broadcasting* and affirmed the *New England Power* decision. Justice Douglas, in an opinion expressing the views of five members of the Court, held that because the Court could not be sure that the Commission had used the correct standard in setting the annual fee for cable television systems, the *Clay Broadcasting* decision should be reversed in order that the case could be remanded to the Commission for further proceedings.

7. In *NCTA*, the Court initially distinguished between taxes and fees, pointing out that Congress is the sole organ for levying taxes and that in doing so it may "act arbitrarily and disregard benefits bestowed by the Government on a taxpayer * * *." 415 U.S. at 340. The Court explained that a fee, however,

> is incident to a voluntary act, e.g., a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. The public

[1] *National Cable Television Ass'n* v. *FCC*, 554 F. 2d 1094 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *FCC*, 554 F. 2d 1109 (D.C. Cir. 1976); *National Ass'n of Broadcasters* v. *FCC*, 554 F. 2d 118 (D.C. Cir. 1976); *Capital Cities Communications, Inc.* v. *FCC*, 554 F. 2d 1135 (D.C. Cir. 1976).

[2] H. Rep. No. 91-316, 91st Cong., 1st sess. 8 (1969).

agency performing those services normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society.

415 U.S. at 340-41.

8. The Court construed title V narrowly to avoid the constitutional question of whether Congress had delegated its taxing powers to Federal regulatory agencies; thus it read title V "as authorizing not a 'tax' but a 'fee.' A 'fee' connotes a 'benefit' and [title V] by its use of the standard 'value to the recipient' carries that connotation." 415 U.S. at 341.

Accordingly, the court concluded that:

The phrase "value to the recipient" is, we believe, the measure of the authorized fee. The words "public policy or interest served, and other pertinent facts" would not seem relevant to the present case, whatever may be their ultimate reach. The backbone of CATV is individual enterprise and ingenuity, not governmental largesse.

415 U.S. at 342-43.

9. While recognizing that cable television systems "may receive special benefits," the court was not sure "that the Commission used the correct standard in setting the fees for cable television systems." Id. Concluding that the congressional aim of title V could "be achieved within the framework of 'value to the recipient' as contrasted to the public policy or interest that is also served," the Court reversed the fifth circuit so that the case could be remanded to the Commission for further proceedings. 415 U.S. at 344.

10. In the companion opinion reviewing the *New England Power* decision, the Court essentially agreed with the D.C. circuit "that whole industries are not in the category of those who may be assessed, the thrust of the Act reaching only specific charges for specific services to specific individuals or companies." 415 U.S. at 349. The Court also relied upon Bureau of the Budget Circular A-25 as reflecting what it viewed as the "proper construction" of title V:

That circular stated that a reasonable charge "should be made to each *identifiable recipient* for a measurable unit or amount of government service or property from which he derives a special benefit." * * * The circular also states that no charge should be made for services rendered, "when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefitting broadly the general public." [Footnotes omitted.] [Emphasis added by the Court.]

415 U.S. at 349-50.

DENIAL OF REQUESTS FOR REFUNDS

11. In December 1974, the Commission adopted an order in response to requests for refund of annual fees paid by cable television systems, announcing that it would refund all the annual fees that had been paid by cable television systems. *Refund of Cable Television Annual Fees*, 49 FCC 2d 1089 (1974). However, in a series of orders beginning in January 1975, the Commission denied all other requests for refund of fees.[3]

THE 1975 SCHEDULE OF FEES

12. In December 1972, the Commission had instituted a new rulemaking proceeding, consistent with its policy of continuing review of its schedule of fees, looking toward another general revision of its schedule of fees both to bring the schedule in line with the Commission's continually increasing costs and to further refine certain fees. *Notice of Proposed Rule Making*, 38 FCC 2d 587 (1972). After review of extensive comments in the proceeding, the Commission adopted a *report and order* establishing a new schedule of fees that was to have been effective May 1, 1974. See, FCC News Report No. 9201, February 27, 1974. However, before the newly adopted schedule was publicly released, the Supreme Court handed down its decision in the *NCTA* case.

13. On August 12, 1974, the Commission adopted a further notice of proposed rulemaking in which it proposed extensive revisions of the fee schedule in light of the *NCTA* decision. 48 FCC 2d 402 (1974). Specifically, in this further notice the Commission proposed to charge fees for those services that provided a value to identifiable recipients, which it specified as activities associated with the processing of applications. It viewed this approach to be consistent with the Supreme Court's interpretation of title V since such fees would recover only so much of the Commission's total costs "as are attributable to work done to create value to the recipients." 48 FCC 2d at 404.

14. After considering the extensive comments filed to the further notice, the Commission adopted its revised fee schedule on January 15, 1975, to be effective March 1, 1975. 50 FCC 2d 906 (1975). The Commission explained the basic approach it had used in revising its schedule of fees in light of *NCTA* in the following manner:

A fundamental ground upon which the further notice was based and upon which the schedule adopted herein is based is that the "value to the recipient" factor is reasonably related to a portion of the Commission's costs. When the *NCTA* decision is read together with title V, a clearly reasonable interpretation that will result in a workable statute is to base the fees as a reflection of value to the recipients upon the cost of Commission activities that confer a benefit on identifiable recipients. The comments have uniformly failed to recognize this. The value to the recipient cannot practicably be construed as an abstract concept unrelated to the other considerations set out in title V. The Court's decision in *NCTA* of the "protective services" the Commission renders the public as compared to the benefits it confers on individual recipients indicates, as does the statute itself, that the costs of providing those benefits constitute the base, and outer limit, for Commission recovery. Otherwise, the Commission could base its fees on the "true" value to the recipient in an economic sense, and we suspect that no one would argue that the value to individuals of the hundreds of thousands of authorizations issued each year by the Commission does not exceed the Commission's total costs of operation many fold. Thus, in attempting to revise our schedule of fees in a manner that will be consistent with title V as construed by *NCTA*, we have identified those areas, primarily processing of applications and other authorizations, which provide a clear value to identifiable recipients. The costs of providing these benefits were set as the upper limit of fee recovery in each area and viewed as equivalent to the total value to all recipients of the specific services.

50 FCC 2d at 908. The revised schedule was expected to recover approximately 40 percent of the Commission's total costs.

THE DECEMBER 1976 DECISIONS

15. In a series of four decisions handed down on December 16, 1976, the U.S. Court of Appeals for the District of Columbia set aside both major actions the Commission had taken in response to the Supreme Court decision—the revision of the schedule of fees and the denial of refunds.

THE FEE SCHEDULE DECISIONS

16. In *National Cable Television Ass'n., Inc.* v. *FCC*, 554 F. 2d 1094 (D.C. Cir. 1976) and *Electronic Industries Ass'n.* v. *FCC*, 554 F. 2d 1109 (D.C. Cir. 1976) the court of appeals set aside the schedule of fees which the Commission had adopted in 1975 in response to the Supreme Court's 1974 *NCTA* decision. The thrust of the D.C. circuit holdings was that the Commission had inadequately justified the fees it adopted by failing to provide specific showing of the "cost basis" for the fees and by failing to demonstrate that the fee reflected not only cost basis but also "value conferred upon the payor." The requirements to be met by the Commission's review of its 1975 schedule on remand were set out at the conclusion of the *EIA* opinion:

In conclusion, we will attempt to summarize the major requirements which we have today decided must be met by the Commission when it reviews its fee schedule on remand. First, the Commission must *justify* the assessment of a fee by a clear statement

[3] *Refund of Fees*, 50 FCC 2d 730 (1975), *recon. denied*, 52 FCC 2d 666 (1975) and 53 FCC 2d 207 (1975); *Refund of Fees*, 51 FCC 2d 545 (1975), *recon. denied*, 53 FCC 2d 207 (1975); *Refund of Fees*, 51 FCC 2d 1136 (1975); *Refund of Fees*, 53 FCC 2d 854 (1975); *Refund of Fees*, 54 FCC 2d 515 (1975).

of the particular service or benefit which it is expected to reimburse. Second, it must calculate the *cost basis* for each fee assessed. This involves (a) an allocation of the specific direct and indirect expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest; and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude particular terms. Finally, the Commission must set a fee calculated to return this cost basis at a *rate* which reasonably reflects the cost of the services performed and value conferred upon the payor. The fees may be imposed only on beneficiaries of agency services who satisfy the criteria of *NCTA* and *New England Power.* [Emphasis in the original.]

554 F. 2d at 1117.

17. The Court stated that title V must be interpreted to limit the Commission to assessing fees:

> * * * at a rate which reasonably reflects the cost of services performed or the expense of other value transferred to the payor. In order to assure this required relationship between the fee-rate and the services rendered, * * * the agency must look not at the value which the regulated party may immediately or eventually derive from the regulatory scheme, but at the value of the direct and indirect services which the agency confers.

554 F. 2d at 1107. The D.C. circuit decisions require the Commission to calculate what would have been a lawful fee under the 1975 fee schedule (using the standards set forth in the *National Cable* and *EIA* decisions) and to refund any difference.

THE REFUND DECISIONS

18. In *National Association of Broadcasters* v. *FCC*, 554 F. 2d 1118 (D.C. Cir. 1976) and *Capital Cities Communications, Inc.* v. *FCC*, 554 F. 2d 1135 (D.C. Cir. 1976), the D.C. Circuit held that the same standards were applicable to the 1970 schedule of fees as well, thus potentially requiring some refund of every fee the Commission collected from August 1, 1970, until all collections were suspended on January 1, 1977—in excess of 11 million separate fees totaling more than $160 million.

THE COMMISSION'S RESPONSE

19. In January 1978, the Commission submitted to the court of appeals a memorandum in which it proposed to recalculate what would have been lawful fees in 1970 (or in some cases 1975) pursuant to the guidelines in the December 1976 decisions and to refund the amount of any fee that had been paid in excess of the recalculated amounts. In addition, the Commission stated that its analysis indicated that because of the size of the administrative problems in making these refunds, it felt that refunds could best be handled if the refund program were to be split into two phases. Phase I would deal with all fees that had been greater than $20. Because there are only approximately 300,000 separate fees in this category, the Commission believed it could handle the planning for these refunds largely with its present staff, and could actually make the refunds without large additional resources. Phase II of the program described to the court of appeals dealt with fees of $20 and less. Because of the extremely large numbers involved in this category (more than 10,000,000 separate fee collections), the Commission did not believe that it could handle these refunds with its present staff—either in planning or implementation. Therefore, it indicated to the Court that further study would be required for this category. The Commission advised the court of appeals that it believed at that time it would be able to begin accepting claims for refunds under phase I of the refund program by late summer of 1978. The beginning of phase II was projected to be no earlier than the spring of 1979. In response to these representations, the court of appeals deferred action on a pending motion to enforce the mandate of its earlier cases. Since that time, the court has been provided reports every 60 days of the progress the Commission is making.

B. THE FEE REFUND PROGRAM

20. This part of the notice describes in some detail the nature of the fee refund program as it has been developed to this stage—with respect to both the reconstruction of a lawful fee schedule for the 1970-76 period and the administrative procedures that have been devised for actually making the refunds. We believe that the Commission's staff has recomputed a fee schedule which complies with the requirements of the court's decisions and has developed a system which will provide efficient review of claims and payment of refunds. However, input from those who will be filing refund claims is very important to the Commission's efforts at this point and we urge all potential claimants to review this notice carefully, along with the additional data that will be placed in the public docket file, in light of their own particular situation in order to assist us in identifying and correcting problems in both the reconstructed schedule and the refund system as quickly as possible.

REIMBURSABLE SERVICES

21. In constructing the recalculated schedule, we have retained a structure in which categories of services for which fees are charged closely parallel those used in previous fee schedules. This was done for three reasons. First: These services, which typically involve processing applications and authorizations which are necessary for orderly management of the radio spectrum and effective oversight of ratemaking and investment decisions, are clearly identifiable and unambiguously confer special benefits from services rendered. Second: The courts have reviewed our statutory authority to collect fees for virtually all of these activities and have not explicitly criticized our classification of reimbursable services.[4] Finally: Timely resolution of this matter necessitates that services defined in our retrospective fee schedule closely resemble those activities for which fees were previously assessed.

22. It must be emphasized that this notice deals only with phase I of the refund program, i.e., only with fees that were in excess of $20 under previous fee schedules. Because of the resources that have had to be devoted to phase I planning, the study and analysis necessary for Commission decisions with respect to phase II, i.e., the remaining fees of $20 and less, have not been completed. We expect at this time to publish a document similar to this, but related exclusively to phase II, within approximately 90 days.

23. As we pointed out earlier, the court of appeals has established relatively explicit requirements for compliance with title V. The requirement is basically in three parts: (1) Assessment of a fee must be justified by a clear statement of the service which it is intended to reimburse. (2) The cost basis for each fee must be calculated based on an allocation of direct and indirect costs, exclusion of expenses incurred to serve an independent public interest, and an explanation of the criteria used to include or exclude particular items. (3) The fee must be set at a rate which reflects the identified costs of services performed and value conferred on the recipient of the service.

24. A more comprehensive and detailed explanation of the services is under preparation and will be included in the final report in the refund section of this proceeding. In addition the basic costing analyses undertaken by the bureaus and offices (which are available for inspection in the public reference room in this docket) provide an additional level of detail on the nature of the services for which fees are being charged. We believe that all of these things, taken together, should satisfy the first requirement established by the court.

25. We wish to point out, however, that changes in the regulatory envi-

[4] For example, the court rejected arguments that the Commission was without authority to impose any fees for services related to tariff processing and equipment testing and approval. *EIA* v. *FCC*, *supra*, 554 F. 2d at 1115-16.

ronment since 1970 likely will warrant redefinition of certain regulatory activities for which we expect to be reimbursed in years ahead. We propose to carefully review these definitions and, if necessary, make appropriate changes to be incorporated in a new, prospective fee schedule which is discussed in the following section.

THE COST OF REIMBURSABLE SERVICES

26. Having defined those services which confer special benefits it was then necessary to explicitly account for all costs incurred by the Commission in processing license applications, construction permits, tariff filings, and other authorizations. As we noted earlier, the D.C. circuit has been fairly explicit in establishing requirements for adoption of fees, which naturally apply whether the Commission is developing a new fee schedule for future application or recalculating past costs for purposes of making a refund.

27. Pursuant to this directive, the staff has derived direct and indirect cost of providing services for which fees were collected between 1970 and 1976. Preliminary estimates of these costs are summarized in attachment A of this notice. It must be emphasized that these estimates are not final and are based on the staff's analysis of four major elements of the costs of providing services for which a fee was charged: (1) The basic personnel and related overhead costs associated with direct provision of the service at the branch level and below; (2) the costs associated with supervision and review at the division and bureau or office level; (3) adjudicatory costs; and (4) costs of the Commissioners' offices, the General Counsel's Office, and the Office of Plans and Policy. A description of how these costs were developed and why they were allocated to specific fee categories is set out below.

28. A number of considerations should be observed in reviewing this system of cost accounting.

(1) Cost estimates are based on 1970 expenses (or, in the case of unique fee categories first imposed in 1975, on 1975 expenses) since the purpose of this exercise is to recalculate what would have been a lawful fee in 1970 (or 1975, where applicable) based on the D.C. circuit's most recent guidelines. These costs will be used only to calculate refunds and will apply regardless of when a fee was actually paid, i.e., if the recalculated fee is $50 and the original fee was $500, the refund will be $450 regardless of whether the $500 was paid in 1970 or in 1976.

(2) Costs presented in attachment A reflect only those costs that have been assigned to this point. Although we believe that the final recalculated schedule will not vary substantially from what is presented in attachment A, there is the possibility that some additional expenses will be allocated (e.g., a portion of enforcement costs) which would raise the recalculated fees and thus reduce refunds.

(3) The costs set out in attachment A necessarily involve some estimates and some projections. This has been necessary because of a lack of sufficiently detailed data for the early years of the 1970–76 period and because the Commission does not maintain cost accounting data in specific enough detail to have been useful for this purpose. However, the cost data that we have developed is a reasonably precise estimate of the costs associated with these service categories during the relevant period. A review of the basic data upon which attachment A is based will, we believe, support that view. As the court pointed out, "Any computation such as [these] must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits." *NCTA* v. *FCC, supra,* 554 F. 2d at 1105.

(4) The format of the recalculated schedule does not track precisely earlier schedules. Filing and grant fees, for example, have been combined. The short descriptive titles of the new fee categories, however, should provide adequate guidance at this time.

DESCRIPTION OF COSTING ANALYSIS

a. *Direct processing costs*

29. The following is a detailed discussion of how the costs were compiled. The Commission in recalculating a proper fee schedule must initially identify the services rendered for which it could legally charge a fee and, having done so, delineate those activities which went into providing those services. Based on that analysis, each bureau and office in the Commission undertook to analyze its activities at the branch level and below and to make their best estimate based on the professional judgment and experience of the personnel involved. The bureaus and offices calculated the average number of work hours that went into each element of professional and nonprofessional activity and that made up every service for which the Commission charges a fee. Although somewhat different approaches were taken in each bureau based on its particular needs, the focus was to reconstruct for the 1971 fiscal year the type and extent of work activity that went into providing each service.

30. The foregoing data prepared by each bureau were provided in work hours or fractions thereof. These figures were converted into compensation dollars using fiscal year 1971 tables (or 1975 where appropriate). The basic compensation cost was figured by using the general schedule grades of the professional and nonprofessional personnel involved, assuming a step level of 4, and multiplying the hourly rate for the grade and step by the number of hours indicated by the bureaus' and offices' analysis. (The hourly rates used for making these calculations came from salary tables Nos. 54 and 60 for the 1970 and 1975 fees, respectively.) The result of these computations established the basic personal costs of providing each service.

31. The next step was to establish the personnel benefit cost associated with this basic compensation cost. An average benefits cost for the Commission as a whole was first determined. This figure was obtained by calculating total Commission benefits paid, in the correct fiscal year, as a percentage of total Commission compensation paid for each year. This percentage rate was then applied to the basic compensation costs outlined above, resulting in a dollar amount of personnel benefits for each category of service. The total of this figure and the basic manpower compensation figure derived earlier provided the total direct manpower cost for each fee category.

32. Third: The appropriate amount for "other objects" (i.e., general overhead) costs was calculated for each category. The first step in this calculation was to list those other objects which could be related to the overall support of the Commission and therefore associated with all of the services for which fees were charged, e.g., rent, utilities, mail, etc. The starting point was the actual amount obligated for these various other objects during the 2 relevant years, fiscal years 1971 and 1975. These overhead costs were then broken down on a cost per commission work year basis. Those cost elements applicable only to the Commission's headquarters operation were spread over total Commission work years less the work years associated with the Commission's field offices. The costs were then assigned to each fee category on a pro rata basis related to total direct work hours required for application processing.

33. Total expenses incurred by the Commission in providing the elements of compensation, benefits and overhead can properly be defined as direct processing costs. In addition to figuring direct processing cost, it was also necessary to calculate indirect expenses. Indirect costs refer to expenses that can properly be attributed to a particular service but are relatively insensitive to the number of applications or authorizations processed in accordance with the provision of that service. These particular cost components are as follows.

b. *Indirect costs*

34. *Executive director support costs.* These costs included the manpower and overhead costs associated with functions performed by the Office of the Executive Director for the Commission as a whole. These functions included financial management, personnel, procurement, administrative services, and records management. These costs were developed by starting with the personnel compensation expended by the functional divisions and adding the appropriate cost for benefits. To this was added an overhead cost based on work hours associated with these divisions for the fiscal years 1971 and 1975. The sum of all personnel and overhead costs were then broken down on a per Commission work hour basis and applied to each fee category.

35. *Bureau and division office costs.* These costs were developed in several steps. Each bureau and office was directed to provide an estimate of the percentage of total time spent by supervisory personnel at the bureau and division level along with their professional and nonprofessional staff in supervising the services for which fees were charged. Work hours for these personnel were converted to compensation to which were added amounts for personnel benefits, other objects and other indirect costs. The total office cost figure for each bureau and division was charged against each fee category in proportion to the Branch cost of processing each fee category and number of applications processed. Time devoted to nonfee areas such as rulemaking, enforcement, or policy-related matters was not included.

36. *Adjudicatory costs.* Costs for the adjudicatory process involve costs for the administrative law judges, Office of Opinions and Review, Review Board, and the Hearing Division of the Broadcast Bureau. Data were collected in this area from each of the respective offices in the form of percentage of time spent by both professional and nonprofessional personnel in adjudicatory activities that were related to providing services for which fees were charged. Work hours were costed for compensation benefits, other objects, and indirect costs. Excluded from this were work hours related to such nonfee activities as enforcement adjudications. The total adjudicatory cost required to support a bureau was divided by the total number of applications processed by the bureau for each applicable fiscal year to obtain an adjudicatory cost per application. This cost was allocated to every fee category within a bureau regardless of whether a particular application was subject to a hearing during this period. Our rationale underlying this broad spreading, rather than having only those applications which went to hearing pay the adjudicatory costs, is that these costs are more akin to a form of fixed, overhead costs which benefit all applicants regardless of whether or not they directly participated in a hearing. Moreover, allocating adjudicatory costs in this manner results in a relatively small addition to each fee which is not burdensome to any applicant. Although at this point we believe that this method of allocating adjudicatory costs is the simplest and fairest method, we are still considering two alternative methods. The first would involve simply having each applicant who was involved in a hearing bear the cost of the hearing. This could be accomplished by adding some type of surcharge to the grant fees of applicants who were involved in hearings. A second alternative is to continue to spread the adjudicatory costs evenly, but to spread them only to applicants in fee categories that were involved in hearings during this period. Thus, there would be no adjudicatory element for categories such as broadcast call sign changes since there were no adjudications involving call sign change applications during this period. Depending on our further evaluation in light of the comments, the allocation of adjudicatory costs in the final recalculated schedule may be based on any one of these three methods.

37. *Commissioners, general counsel, plans, and policy.* The final element in the cost allocation process is the apportionment of the costs of the Commissioners' offices, the Office of General Counsel, and the Office of Plans and Policy. These costs have been treated as a general overhead type of cost since it has been concluded that they each provide a general type of support service that is essential to providing the services with which we are concerned here. Costs of compensation benefits, other objects, and executive director support for these organizations were obtained and converted to a work hour rate which was multiplied by the hours and fractions of hours required to provide the services in each fee category.

38. As we have emphasized at several points, this process of allocating costs is not yet completed. Although we do not expect any substantial diviations from the figures in attachment A and in the tables below, some minor adjustments may be made based on our continued analysis and on the comments which parties submit. The only significant element of which we are aware at the present time that has not yet been taken into account is the adjustment of personnel costs to account for annual leave, sick leave, administrative types of leave for such things as jury duty and training. This will result in a uniform percentage increase in costs in all categories. Our estimate at this time is that it will increase the costs approximately 10 to 15 percent.

39. Keeping in mind the preliminary nature of the cost allocation process, it is our estimate, based on the figures presently contained in attachment A, and assuming a 100 percent claim rate, that the Commission will refund and retain the following amounts in each service area:

TABLE 1.—*Preliminary Estimates of FCC Phase I Fee Refund Amounts*

Service	Collections	Estimated refund	Estimated retained	Items
Chief engineer	$4,397,729	$2,850,316	$1,547,413	20,705
Common carrier	31,781,837	22,590,457	9,191,380	81,108
Safety and special	3,773,500	826,520	2,946,980	108,900
Broadcast	47,788,470	32,728,495	15,059,975	75,540
Cable TV	274,674	0	274,674	12,901
Total	88,016,210	58,995,788	29,020,422	299,154

It should be pointed out that the results in table 1 are distorted somewhat by three fees which involve large numbers of dollars and substantial refund percentages. When those three fees are not considered, refunds in each service area are anticipated to be as follows:

TABLE 2

Service	Collections	Estimated refund	Estimated retained	Items
Chief engineer	$4,397,729	$2,850,316	$1,547,413	20,705
Common carrier*	13,421,293	4,986,054	8,435,239	78,645
Safety and special	3,773,500	826,520	2,946,980	108,900
Broadcast**	12,590,363	478,303	12,112,060	68,247
Cable TV	274,674	0	274,674	12,901
Total	34,457,559	9,141,193	25,316,366	289,398
*Does not include:				
Voice cable/carrier equipment	$18,360,544	$17,604,403	$756,141	2,463
**Does not include:				
Assignment and transfer	$24,873,333	$23,123,361	$1,749,972	3,514
TV annual fee	10,324,774	9,126,831	1,197,943	3,779

40. The foregoing are brief summaries of the relatively straightforward, but nevertheless complicated analysis and calculations that have been performed in order to identify reimbursable costs that are set out as attachment A. Needless to say, the data supporting that schedule have become quite extensive. In order not to unduly burden this notice, we have not included any of that data here. However, as we discussed earlier, all of that information as well as more exhaustive descriptions of the various costing methodologies have been included in the public docket file and is available for public inspection.

EXCLUSION OF VALUE TO THE RECIPIENT IN THE FEE REFUND PROGRAM

41. As noted previously, the courts have directed the Commission to calculate fees on the basis of both costs and value. However, definitive guidelines concerning the application of value to our retrospective fee schedule have not been provided. Consequently, we are not certain how value should be defined, measured, or used in calculating fees. Given this situation coupled with our desire to complete phase I of our refund program on a timely basis, we have decided to recalculate fees paid between 1970 and 1976 exclusively on the basis of costs.

42. Moreover, the 1970 and 1975 fee categories were not designed in such a way as to provide the information necessary to allocate indirect costs based on value to the recipient along the lines suggested in part C. If, for example, value to the recipient were to be based on population on market coverage or the value of spectrum used by a licensee, that information is not presently available for many nonbroadcasting station licensees who paid fees between 1970 and 1976. Thus, there would have to be a major data collection effort for many classes of licensees (such as licensees in the safety and special radio services). This would have greatly increased the time necessary to begin the refund program. In order to handle that program as expeditiously as possible, we have therefore decided not to include any value to the recipient in calculating the refunds.

43. We wish to make it quite clear that our decision to exclude value is not intended to establish a precedent concerning future fee schedules. Indeed, we intend to develop a new schedule of fees that will incorporate the concept of value to the recipient. Proposed methods by which this could be done are discussed in the section C below. Section D also describes a method of basing value to the recipient on the use of the frequency spectrum, if the Commission were given new legislative authority.

ADMINISTRATION OF THE REFUND PROGRAM

44. Because of the scope of the administrative impact of the refund program with a potential, in phase I, of 300,000 transactions involving nearly $90,000,000, it has been necessary to develop a detailed, computer based system to operate this program. Design of the basic elements of that system is largely completed. We should emphasize again that the system described below will deal only with over-$20 fees. Because of the much larger numbers of potential applicants in phase II of the refund program dealing with under-$20 fees, a different approach may have to be taken.

45. The phase I refund system will be applicant generated, i.e., refunds will be made only in response to claims filed with the Commission. In 1975 the Commission refunded annual fees to cable television systems on its own initiative without requiring that any claim be filed. Our staff initally considered employing that same procedure in this instance, but quickly found that it would not be workable. The cable television situation involved a complete refund of one type of fee to approximately 4,000 cable television systems and involved only one record system. This program will involve varying percentages of refund of hundreds of different types of fees to hundreds of thousands of different types of claimants covering several different record systems. We found that it would be impossible to make refunds on any basis other than a claims system. Although the Commission's records are adequate to permit verification of claims, those records would not provide an adequate basis for us to initiate refund payments on our own.

46. Because certain specific information will be required, claims will have to be submitted on special forms designed by the Commission. These forms will be distributed widely. Included as attachment B, is a preliminary draft of the proposed claim form and its instructions. Each fee will have to be listed and described separately on the claim form. In the case of parties who will be filing for a large number of refunds, certain grouping of claims may be requested to expedite processing (e.g., by call sign, geographic location, equipment type). In the case of claims for fees that exceed a certain amount (e.g., $100), some supporting documentation will be required, such as copies of cancelled checks, licenses, authorizations, letter of approval or denial.

47. The instructions, as indicated, will provide necessay tables and guidance and the form is structured in such a manner that the applicant will calculate the refund to which he/she is entitled. This should involve in most cases a relatively simple process of matching the fee paid against the recalculated fee, the refund amounting to the difference between the two figures.

48. Refunds will be paid only to the licensee/grantee, who will be required to sign all claims, although claims may be prepared and submitted by agents/attorneys. In unusual cases such as deaths, bankruptcies, corporate mergers, etc., where there has been some change in legal relationships, payment of the refund may be made to an estate or a trustee in bankruptcy or some other party upon a proper showing.

49. The claimant will also be required to sign a waiver whereby he agrees to accept the amount claimed as full satisfaction of any claim for refund of the particular fees involved. The purpose of this provision is to allow the refund program to go ahead immediately where individuals are satisfied with the proposed refund. We anticipate that renewed litigation will result from our decisions here and without such a waiver provision the entire program would have to be held up pending the outcome of the litigation. The waiver will apply only to the fees for which an individual seeks refund; therefore, this procedure would not prohibit an individual from claiming refund of some fees (and signing the waiver) while challenging the refund in the case of other fees.

50. Upon receipt of the claim forms, the respective bureau or office in the Commission will review the claims against its records, verify the amount of the refund requested, and approve or deny the refund. Claims will be processed on a first-in first-out basis. No claims will be accepted by the FCC

under this program after 12 months from the starting date of the program. However, claims may be submitted to the Comptroller General after that time.

51. At this time we expect to operate the central processing section of the fee refund program in Hyattsville, Md. All refund requests will be required to be sent to a special post office box located there. We also plan a special unit in this central processing section to which inquiries on the status of a pending refund claim can be directed, and the system is being designed so that a constant record will be maintained of the status of each claim.

52. Undoubtedly, disputes will arise over whether a fee was paid or to whom the refund should be paid or a host of similar questions. Initial efforts will be made to resolve any questions informally seeking more information from the claimant. If that proves unsuccessful and the claim is denied by the responsible bureau, there will be made available an administrative appeals process by which the claimant can seek review within the agency of the bureau or office denial of his refund claim. The specifics of that procedure have not been completed at this time. However, it is likely that such appeals will be heard by a designated board of Commission employees proceeding under relatively informal and expedited procedures. For the Commission's purposes, we expect the decision of this board to be final, although section 5(d) of the Communications Act, 47 U.S.C. 155(d), may require the Commission to entertain applications for review. Parties who are denied refunds by the Commission have additional avenues of redress by filing claims with the Comptroller General or by filing suit in the Court of Claims.

53. One final aspect of the refund program merits consideration at this time. Common carriers might be ordered to pass on to customers all refunds less expenses incurred in obtaining these revenues. As noted previously, rates charged to telephone subscribers are regulated so as to allow carrier firms to raise revenues sufficiently large to cover all legitimate business expenses including fees assessed by the Commission. Thus, refunds could be counted against the carriers' revenue requirements. That is, if a particular firm realizes $10 million in refunds, rates for selected services could be reduced so as to afford customers an equivalent amount of savings. Interested parties are invited to comment on these propositions and to suggest methods by which refunds could properly be passed through to subscribers.

54. It should be evident that this is an extremely complicated program. The Commission is organized to grant licenses—not refunds. Therefore, it has taken us somewhat longer than anticipated to establish the procedures necessary to implement refunds. The fact that over 300,000 potential refunds and nearby $90,000,000 are involved at this point has made it imperative that we adopt careful and proper procedures. The primary purpose of this notice is to request comments of the many parties who will be applying for these refunds on our progress to this point. Comments will, of course, be considered with respect to whether the recalculated schedule is consistent with the court's mandate. We are interested also in comments with regard to procedures for claiming and processing refunds. To this end we have instructed the Commission's staff to hold a public meeting in early October to discuss the refund system, to explain the reasons for its design in the present form, to answer any questions, and to receive and give consideration to recommendations for changes in the system. Public notice of this meeting will be made shortly.

C. Prospective Fee Schedules Using Existing Legislative Authority

55. Up to this point we have focused exclusively on our proposed refund program, including the design of a retrospective fee schedule to be used for that purpose. We wish to make it quite clear, however, that the collection of fees in the years ahead will not necessarily be calculated on the basis of that schedule. The Commission is obligated to periodically review procedures used to establish fees and make necessary adjustments where needed. As a result we propose to undertake immediaely a thorough evaluation of an appropriate current licensee fee program. This will include a complete, zero-based review of all services provided by the Commission on behalf of both private and public interests. Specifically, we propose to review carefully each of the agency's processes culminating in an explicit, exhaustive catagorization of services rendered, irrespective of the beneficiaries of those services. In doing so we further propose to systematically identify each and every component or input that is necessary to the provision of each service. A new system of cost accounting will then be introduced to ascertain expenses incurred in providing individual services, the total cost of which will sum to the Commission's budget in any given fiscal year.

56. Having allocated all Commission activities to specific services, we shall determine which of those services confer benefits on private interests and as such form the basis of the new fee schedule. Finally, fees will be calculated through the use of a two-part schedule reflecting both costs and value to the recipient. Specifically, the direct costs of providing a particular service will be divided equally among the recipients while indirect costs will be distributed in accordance with value conferred. Individual fees will simply reflect the sum of direct and indirect costs assessed to each recipient.

57. We are prompted to recalculate a fee schedule at this time, partly because reliance on the schedule used to calculate refunds would likely result in the recovery of only a small fraction of the Commission's current budget. We believe it is important to look toward a fee schedule which would allow full recovery of all reimbursable Commission costs. To the extent that fees do not recover the true costs of reimbursable services, differences must be made up through the appropriation of general tax receipts. Because many taxpayers do not directly or indirectly benefit from each and every service rendered by the Commission, we fail to see why they should be required to pay for those regulatory activities that principally benefit private interests. Failure to recover all reimbursable costs is tantamount to forcing taxpayers to subsidize those firms and their customers who are engaged in the production, sale, and consumption of telecommunications services. Such subsidies may not be legal, necessary, equitable, economically efficient or in the public interest.

58. We shall make every effort therefore, to insure that future fee schedules recover all costs associated with those services that principally benefit our licensees. To that end, we plan to design a completely new schedule of fees and to implement that schedule as soon as possible. We welcome comments and suggestions concerning this project, the details of which are outlined below.

1. Specification of Services

59. As noted previously, the Commission, under Title V of the IOAA, is empowered to assess fees for any "work, service, publication, report, document, benefit, privilege, authority, use, franchise, permit, certificate, registration, or similar thing of value or utility" conferred on any person. Moreover, the Commission is mandated to become, through the assessment of fees, "self-sustaining to the fullest extent possible." The courts, however, have held that the cost of those regulatory activities which principally serve an independent public interest cannot be assessed to licensees but rather must be financed out of general tax receipts.

60. In view of the courts' directives, the development of a new, prospective fee schedule must commence with a

very explicit description of services provided by the Commission. Having done so a nexus must be established between services rendered and recipients of value. Those activities that principally benefit an independent public interest could then be identified and distinguished from other regulatory activities for which we can legally assess fees.

61. Through this approach, all Commission activities would be expressed in terms of a service provided to some beneficiary, whether private and/or public. The staff would then be in a position to allocate the Commission's total resources between all services rendered, and in doing so define reasonably reliable and precise cost bases from which to calculate individual fees. We believe this can best be accomplished by defining services in accordance with those objectives which the Congress intended to achieve through the passage of the Communications Act of 1934 and our subsequent interpretation of that legislative mandate as reflected in our rules. For example, the Commission is essentially faced with two basic responsibilities. First, we are charged with allocating and assigning radio frequencies so as to insure that orderly use is made of this valuable and scarce public resource. Second, we are empowered to act as a surrogate for market forces in assuring that the price, quantity, and quality of telecommunication services offered by natural monopolies correspond with competitive market solutions.

62. In exercising these responsibilities it is necessary to confer exclusive or shared rights to use the spectrum in designated areas. Similarly, consideration of economic efficiency often dictates that monopolies retain exclusive rights to offer selected telecommunications services in selected markets. It is through the grant of exclusive rights that the Commission confers substantial benefits on those commercial enterprises that we regulate. Accordingly, we propose to identify all regulatory activities (e.g., processing license applications) that are directly related to the provision of exclusive or shared market rights and to recover the full cost of those services through our fee schedule.

63. Additionally we, propose to identify other activities that are designed to insure that regulated firms continue to offer a wide array of high quality telecommunications services at reasonable rates. Undoubtedly, expenses incurred in support of some of these activities (e.g., services rendered by the Commission's Consumer Assistance Office and the Public Information Office) will not be recovered because they exclusively or principally benefit the general public. Still other activities, however, such as those carried out by the Field Operations Bureau are mutually beneficial to both private and public interest and under certain circumstances could properly be defined as reimbursable services. In EIA, for example, the Court pointed out that "the Commission is not prohibited from charging an applicant or grantee the full cost of services rendered to an applicant or grantee which also result in some incidental public benefits." Moreover where joint benefits are involved, the courts have suggested that private interests are the principal recipients of a service, if the provision of that service is necessary to insure that the licensee complies with the Communications Act of 1934. Because compliance with the law is a condition of doing business, it would follow that expenses incurred by the Commission in providing such assurances should logically be regarded as necessary inputs into a regulated firm's production process and as such should be recovered in full by the Commission.

64. Admittedly, the discussion above is designed solely to give interested parties a general idea of the approach that we plan to take in redefining reimbursable service classifications. Although we can say that future classifications will exhaustively account for all services rendered to both private and public interests, the program has not developed to the point of disignating specific service categories for which fees will be assessed in the years ahead. Nevertheless, it is obvious that the methology outlined here could easily result in substantial changes in the definition of those services that will be employed in Phase I of the refund program. In that regard we request comments on the following points.

a. Do services listed in attachment A afford a reasonable and complete representation of services rendered by the Commission to the benefit of private interests?

b. Could or should some of these service categories be simplified by combining separate classifications as a single reimbursable service? Would such combinations be consistent with the law and our proposed methodology for redefining service categories? Would the simplification of service definitions and a subsequent fee schedule reduce the administrative burden of complying with our fee requirements?

c. Should certain regulatory activities not reflected in that list of reimbursable services contained in Attachment A be included in prospective fee schedule? If so what other activities should be included and why? Similarly, should any activities that are presently defined as reimbursable services be excluded from future fee schedules and if so for what reason?

d. Are we correct in suggesting that the cost of services that confer benefits to both private and public interest are fully recoverable, if provision of those services are necessary to insure that our licensees comply with the law? If this interpretation is correct, what standards should be used in determining whether particular regulatory activities are necessary to insure compliance? What if any additional activities would be defined as reimbursable services if such standards were used in designing a new fee schedule?

2. SPECIFICATION OF THE COST OF REIMBURSABLE SERVICES

65. As noted previously, the courts have insisted that a legally defensible schedule of fees must include a detailed description of all direct and indirect costs incurred in providing reimbursable services, as well as a specific explanation of why those costs are attributable to that service. Moreover, the fee schedule should be structured in such a way so as to allow the court to review various expense elements comprising the cost basis of a particular service and to determine independently whether each of those elements can reasonably be attributed to that service.

66. Having expressed the Commission's regulatory functions through an exhaustive array of service definitions, we believe the courts' directives can be satisfied by identifying all resources that are directly or indirectly devoted to the provision of each of those services by all organizational units within the Commission. To this point we have focused our attention on development of a retrospective fee schedule to be used as the basis of our proposed refund program. We believe this schedule accurately reflects expenses associated with providing the reimbursable services as we have defined them for the period covered by the refund program. However, we wish to make it clear, that as a future schedule of fees is developed we will not necessarily formulate it in the same manner as employed for the refund schedule. The Commission is obligated to periodically review procedures used to establish fees and make adjustments where needed. Therefore, we propose to thoroughly evaluate all services rendered by the Commission and their costs. We will develop a list of each regulatory activity, as defined by our legislative mandate and our rules, that confers benefits on special interests and/or the general public. Once this list is established we plan, through cost accounting techniques, to develop a schedule of fees which reflects as accurately as is possible the

expenses incurred by the Commission in rendering reimbursable services.

67. This approach we believe is superior to that used in phase I of our refund program in that it will provide a complete picture of how all of the agency's resources are being allocated between individual services. As such, a complete system of cost accounting should enable us to estimate the true cost of reimbursable services far more accurately than we have been able to achieve in previous fee schedules.

3. VALUE TO THE RECIPIENT

68. Having defined the cost bases of all reimbursable services, the Commission must then establish a schedule of fees so as to fully recover those costs. The Commission's statutory authority pursuant to title V of the independent Offices Appropriation Act of 1952, as well as court decisions interpreting that authority, includes, along with costs, value to the recipient as a factor to be considered in setting the fee. Admittedly, incorporating a concept of value into a fee schedule presents difficult problems. Title V and subsequent court constructions of that legislation do not contain explicit explanations of what value to the recipient means or how it should be treated in assessing license fees. Some have suggested, for example, that value is relevant only in determining which Commission services confer specific benefits on our licensees. Under this interpretation, the concept of value would not play a role in figuring the size or amount of the fees; but would only be used to determine those regulatory activities for which the Commission can legally recover expenses incurred on behalf of our licensees. Calculations of the actual charges would be done exclusively on the basis of costs.

69. This may not be the only interpretation of our enabling legislation. As noted previously, the D.C. circuit has stated that the first step in establishing a fee schedule involves justifying "the assessment of a fee by a clear statement of the particular service or benefit which it is expected to reimburse." We must then calculate the direct and indirect cost of that service. Finally, the court of appeals has said that "the Commission must set a fee calculated to return this cost basis at a rate which reasonably reflects the cost of the services performed and the value conferred upon the payor." This prescription might mean that value should be used for more than just determining whether the Commission can collect fees for services rendered. Had the D.C. circuit intended to confine the treatment of value in this manner it surely would have so ordered and most definitely would not have directed the Commission to calculate fees on the basis of both costs and value.

70. Still others have suggested that recoverable costs and value conferred are synonomous. Once again, the Supreme Court and the D.C. circuit distinguished cost and value, and have insisted that fees be calculated so as to reflect both concepts. In our view, the cost and value of the Commission's licensing processes are distinct concepts. The value of processing a television license application to a broadcaster bears little relationship to the Commission's cost of providing that service just as the value of insulin to a diabetic bears little relationship to the cost of manufacturing it.

71. There is an additional reason why we believe strongly that fees should take into account value to the recipient as well as the cost of the services provided by the Commission. Hypothetically, if fees were based exclusively on the Commission's cost of regulating various classes of licensees, such fees could potentially have a very adverse impact on regulation. Cost based fees logically imply that the more detailed and complex Commission regulations are, the more paperwork which the Commission requires from its licensees, and then processes, and the more inefficient the Commission is at processing paper, the higher the fees charged licensees. In the event that the appropriations process does not provide sufficient insulation, such a system might provide the wrong incentives if one wishes to minimize the regulatory burden on licensees and to operate the Commission as efficiently as possible. We are not saying that this has ever happened nor that it ever would happen at the Commission. We are only suggesting that this is a theoretical possibility in any regulatory agency which uses a system of fees based only on cost of service.

72. We suggest, therefore, that a new fee schedule should reflect both costs and value conferred. To that end we are proposing to use a two-part schedule to calculate future fees. Part One would reflect the average direct cost of processing various license applications. Part Two would entail an assessment of indirect costs based on value conferred. The fee would then be determined by summing both parts.

73. To illustrate, assume the Commission renders a reimbursable service to two recipients, A and B, at a total cost of $100. Further assume that 70 percent, or $70, of that amount is incurred as direct, processing costs with the remainder (i.e., $30) reflecting indirect costs such as those associated with supervisory, adjudicatory or policy making activities. Under a two-part fee schedule, each licensee would bear an equal share of the Commission's direct, processing costs (i.e., $35-$70 divided by 2) because these costs can be assigned directly to individual licensees. Each recipient also would be assessed some proportion of the total indirect cost of providing that service, depending on the relative amount of value conferred. Again, indirect costs would be distributed among licensees on the basis of value (rather than equally) because those expenses do not vary with the number of applications processed. Consequently, if the service in question was twice as valuable to recipient A as to recipient B, then recipient A would be assessed two-thirds of the indirect costs, while recipient B would pay the remaining one-third. Summing both parts, recipient A would be charged $55 (i.e., $35 in direct costs and $20 in indirect costs) while recipient B would be assessed $45 (i.e., $35 and $10 in direct and indirect costs, respectively). Both fees, of course, would sum to $100 or the total cost of providing the service. As such value would not be used to collect fees in excess of total recoverable costs but rather would only be used to determine how indirect costs should be distributed among recipients.

74. We believe this approach holds great promise in complying with our legislative mandate regarding the calculation of appropriate fees. First, it explicitly incorporates both costs and value conferred into the calculation of fees and as such should comply with the court's prescription. Second, the total amount of revenue collected under this approach will not exceed the total cost of providing the service. Additionally, fees assessed under a two-part schedule need not depend on the licensees ability to pay but rather could and should reflect the size of and possibly the nature of the licensees potential market which he/she is afforded access to by virtue of the Commission's regulatory activities. Fees calculated through this procedure therefore would not constitute a tax. Third, since fees paid by individual recipients would partially reflect both cost and value conferred, assessments could be more equitable and economically efficient than would be the case if fees were calculated exclusively on the basis of costs.

75. The latter consideration, in our view, merits particular consideration. Because the Commission has never charged licensees directly for the use of the radio spectrum, demand for certain frequencies exceeds supply. The Commission, therefore, must allocate and assign frequencies in order to protect the integrity of services from intolerable levels of interference. In carrying out this function, exclusive or shared rights to operate broadcast and nonbroadcast radio facilities (including common carriers and the safety

and special radio services) in a given area are conferred on the licensee. Quite obviously, benefits bestowed on recipients of licensing services rendered differ depending on the type of license processed, the nature of frequencies assigned, and population in the area covered by the applicant's signal. Consequently, if the value to the recipient is not taken into account in calculating fees, licensees assigned to small areas with few people (such as rural television markets) will necessarily bear an unreasonably large proportion of the cost of regulation, even though the spectrum they use is relatively low in value. Fees based exclusively on cost therefore could adversely effect the development of new telecommunications services in sparsely populated areas of the country.

76. Similarly, many services rendered by the Commission on behalf of domestic and international common carriers are made necessary by deficiencies in the market place and a subsequent desire on the part of Congress and the Commission to insure that the results of business decisions undertaken by regulated carriers are analagous to decisions that would be made if these lines of commerce were characterized by a high degree of competition and were unregulated. Subscriber rates of regulated carriers are fixed so as to assure that revenues earned by regulated carriers are just sufficiently large to cover all legitimate business expenses including a reasonable rate of return on invested capital. Since fees are legitimate expenses, they are reflected in allowable rates charged to the carriers subscribers. Thus, rather than dividing indirect costs of reimbursable services equally among all regulated carriers, those costs should be allocated in proportion to the number of installations served. Otherwise, a disproportionately large share of the Commission's budget will be borne by customers of relatively small firms that would, in effect, result in cross subsidies benefiting subscribers of large companies. Fees allocating both direct and indirect costs equally among common carriers also could increase revenue requirements faced by relatively small firms desiring to enter those markets that the Commission and the courts have deemed suitable to competition. As a result, those charges could give rise to additional barriers to entry and accordingly run counter to our policy of promoting competition.

77. Finally, we believe that this approach avoids establishing a tax that the Commission has no authority to assess in lieu of a true fee. The United States Supreme Court has stated that a fee "is incident to a voluntary act," which "bestows a benefit on the applicant, not shared by other members of society." 415 U.S. at 340-41. With few exceptions, no one is forced to submit applications to the Commission but those who do, more often than not, benefit from services rendered, albeit in differing degrees. On the basis of this reasoning, and the Supreme Court's definition of regulatory fees, we believe that our proposed two-part fee schedule cannot reasonably be construed as a tax, particularly since assessments will not depend on the level of revenues or profits earned by our licensees. Those who disagree with this particular assessment, however, are welcome to make their views known.

4. MEASURING VALUE TO THE RECIPIENT

78. Successful application of our proposed two-part fee schedule quite obviously requires that the concept of value conferred be carefully defined, accurately measured, and distinguishable from value derived. As suggested above, we believe this can be reasonably accomplished by defining value conferred in accordance with size and possibly the nature of the market covered by the radio licensee's signal. As an example, value conferred on commercial broadcasters would be measured by the size of the audience which the station is technically capable of reaching by virtue of its location, transmission power, authorized operation time, frequency assignment and other relevant technical considerations. Again, this definition is premised on the notion that the Commission confers exclusive rights to use radio and television channels with particular markets.

79. Populations residing within the grade A or B contour or the station's net weekly circulation are illustrative of possible measures of potential market size. Similarly, for licensees in the safety and special radio services, value conferred might be measured by the population contained in the area covered by the licensee's signal or the area protected from interference. Where many licensees share a particular channel equally, then it would be assumed that value conferred is also shared equally and should be divided equally among them. Whatever definition were chosen, the indirect costs attributable to, say, annual license fees for television stations would be distributed in accordance with the number of households residing within the range of the station's signal. We invite comments on the legality of this approach.

80. We are also especially interested in comments concerning the appropriateness of market definitions mentioned above as reasonable measures of value conferred and whether their application to a two-part fee schedule would result in an equitable and efficient distribution of the Commission's reimbursable costs. Suggestions Concerning proper measures of value conferred through the provision of other services are also welcome. Those interested in submitting recommendations, however, are requested to keep in mind that measures of value should reflect definitions of value that can be readily quantified, such as the population covered by a transmitting signal, or the number of subscribers served by a common carrier.

D. FUTURE SPECTRUM FEES NOT CONSTRAINED BY THE COMMISSION'S BUDGET

81. The discussion in part C of this notice of inquiry suggested the use of a two part fee: one part based on direct cost of Commission services, and a second part based on using some measure of value to the recipient to allocate indirect Commission costs among recipients. That discussion was grounded on the assumption that under existing legislation the Commission is only authorized to collect fees which at most equal its operating budget. However, because the Commission allocates and then assigns the frequency spectrum to all non-Federal Government users, it controls a resource whose value undoubtedly far exceeds the Commission's budget. Therefore, this part of the notice of inquiry raises issues concerning charges for use of the spectrum, if the Commission were to seek and obtain legislative authority to obtain the "fair market value" for the spectrum with the result that spectrum fees would not be constrained by the Commission's budget.

COSTS OF COMMISSION SERVICES

82. An important issue is to what extent fees to licensees should be based on both the Commission's cost of providing service and the value of the spectrum used by licensees. One possibility would be to charge users only for the value of the spectrum used. In that case, nonusers of the spectrum (such as some CATV systems, possibly some telephone common carriers, and some manufacturers of equipment who request type approval) would pay no fee at all. Also, common carriers would be charged only for spectrum use, and not for any other activities. However, because the Commission does provide a definite service through certification, type acceptance and type approval of manufactured equipment, and also provides service to common carriers, whether or not they use spectrum, it seems reasonable to assume that all recipients of any Commission service should pay the direct costs of providing that service.

83. A second alternative would be to base fees solely upon the costs of operating the bureaus which regulate par-

ticular classes of users, and to tie fees closely to those costs. Thus, common carriers, broadcasting stations, cable TV systems, and safety and special radio services would pay fees based on the costs of regulating them. In that case, the fees charged each licensee or class of licensees would reflect the Commission's cost of regulating them. Fees would not have any close relationship to the value of the spectrum used. Unfortunately, as mentioned earlier, such an alternative could at least theoretically have very adverse effects, because it implies that the more complex are the regulations covering any industry, the more paper which licensees are required to file and which Commission bureaus must then process, and the less efficient is the Bureau at processing paper, the higher would be the fees to the licensees. In the event that the appropriations process does not provide sufficient insulation such a system might provide the wrong incentives if one wishes to minimize the regulatory burden on licensees and to operate the Commission as efficiently as possible. Moreover, it ignores the importance of the value of the spectrum which the Commission makes available to its licensees.

84. The third possibility is to base fees primarily on spectrum use, but also to include the directly allocable costs of licensing specific groups of users and possibly enforcing Commission regulations. Thus, each class of users would pay the costs of issuing its license and the cost of enforcing its rules. For commercial broadcasting stations and common carriers, we would expect that licensing and enforcement costs would be a very small fraction of the spectrum use fee. On the other hand, for CB users, for example, the spectrum fee and the cost of issuing the license would be minimal, whereas the enforcement costs might be a much larger fraction of the total fee. Manufacturers requesting type approval of equipment would only pay the cost of testing their equipment, but no spectrum fee, unless portions of the spectrum were reserved for use of that equipment. This approach raises a number of general questions:

(a) Should licensees be charged a fee both for the use of the spectrum and for the direct cost of processing their license?

(b) If licensees should pay both for spectrum use and for certain limited Commission costs, what Commission costs should be included and excluded?

(c) Should any classes of licencees be excluded from paying any Commission costs, or pay fees which are less than Commission costs?

85. Other questions concerning allocating the costs of Commission services were discussed in detail in parts B and C of this notice of inquiry. Many of the same questions concerning the definition and measurement of cost of service would be relevant under a new fee schedule which included both a spectrum usage charge and a cost of service charge. Thus, the remainder of this section of the notice of inquiry concerns issues related to charging directly for use of the spectrum.

SPECTRUM CHARGES

86. The radio frequency spectrum is a scarce and valuable natural resource. Users of the spectrum must obtain a license from the Commission to operate, just as individuals and companies who wish to drill for oil and gas, mine coal, or graze cattle or sheep, must obtain permission from a Federal agency before they can gain access to Federal lands.[5] Competitive bidding has been used in the leasing of offshore oil and gas rights in order to obtain a "fair market value" for the use of that scarce resource.[6] It is obvious that spectrum is just as necessary to radio communications as crude oil is to gasoline production and land is to coal mining, cattle grazing, and timber growing.[7] It is also clear that under the existing spectrum allocation plan and existing assignments the spectrum is particularly valuable in some locations and in some frequency bands as indicated by the fact that many existing users would presumably be willing to pay a substantial fee to obtain additional spectrum. Moreover, many nonusers would be willing to pay a fee to gain access to certain parts of the spectrum in particular locations (especially large metropolitan centers).

87. Nevertheless, at the current time there is no direct charge for use of the spectrum. It has been argued that in the absence of any price being attached to the use of the spectrum, users have little or no reason to use it efficiently or to consider what others must give up when they use a particular portion of the spectrum. The result is that some of the spectrum is left unused or is used for purposes for which it has little value while some potential users for which the spectrum has high value may get no spectrum at all or at least get less spectrum than they would be willing to pay for. Moreover, if users had to pay the value of the spectrum, they would be more likely to consider substitutes for spectrum such as coaxial cable.

88. Users would also have an incentive to conserve spectrum through the use of lower power transmitters, directional antennas, shorter antenna towers, narrower bandwidths, time sharing, etc. If spectrum charges were related to spectrum use, the amount of fees collected and the use of the spectrum by licensees would give some indication of whether or not additional frequency allocations should be made to a particular service. Therefore, there might be great economic benefits to society if users did have to pay for the use of the resource. In addition, there would be a better indication of what is given up when spectrum is allocated or reserved for a particular class of user.[8]

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[5] It should be noted that oil, gas, and coal are usually said to be depletable or nonrenewable resources, whereas grazing land, timber, fish, and the radio frequency spectrum are usually said to be renewable resources. It is possible that the issues involved in establishing prices for renewable and nonrenewable resources may be somewhat different. Nevertheless, the agencies that make available for public use those tangible resources must deal with many of the same kinds of issues which are raised before the Commission in determining frequency allocations and assignments. For example, mineral leasing involves at least the following goals:

(1) Promoting efficient use of the resource through time,

(2) Promoting competition,

(3) Promoting innovation and technological change,

(4) Capturing economic rents, and

(5) Changing the initial distribution of resources.

See, for example: James Olson, "History of Public Land Mineral Policy," Charles Stone, "Economic Theory and Alternative Leasing Policies;" Philip Jaynes and David Garvin, "Policy Goals;" and Ernest Pantos, "Leasing Methods;" chapters 2, 3, 4, 5 in U.S. Federal Trade Commission, Report to the Federal Trade Commission on Federal Energy Land Policy: Efficiency, Revenue and Competition, October 1975, pp. 19-302; reprinted by the U.S. Senate, Committee on Interior and Insular Affairs, pursuant to S. Res. 45, The National Fuels and Energy Policy Study, Serial No. 94-28, 94th Congress, 2d sess., 1976.

[6] The Outer Continental Shelf Lands Act of 1953, 43 U.S.C. § 1331, et seq., states that: "* * * the Secretary is authorized to grant to the highest responsible qualified bidder under regulations promulgated in advance, oil and gal leases on submerged lands in the Outer Continental Shelf * * *."

[7] See, for example, Harvey J. Levin, The Invisible Resource: Use and Regulation of the Radio Spectrum (Baltimore: The John Hopkins University Press, 1971); Harvey J. Levin, "The Radio Spectrum Resources," Journal of Law and Economics, 11 (October 1968), pp. 433-501; and Ronald H. Coase, "The Federal Communications Commission," Journal of Law and Economics, 2 (October 1959), pp. 21-40.

[8] See footnote 7, supra. See also John O. Robinson, "Spectrum Allocation and Economic Factors in FCC Spectrum Management," IEEE Transactions on Electromagnetic Compatibility, EMC-19 (August 1977), pp. 182-190; Douglas W. Webbink, "The Value of the Frequency Spectrum Allocated to Specific Uses," IEEE Transactions on Electromagnetic Compatibility, EMC-19 (August 1977), pp. 343-351; John O. Robinson, "An Investigation of Economic Factors in FCC Spectrum Management," Federal Communications Commission, Office of the

Footnotes continued on next page

89. According to Bureau of the Budget Circular No. A-25, dated September 23, 1959, "A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit." That Circular also states that:

> Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

The Federal Land Policy and Management Act of 1976 also states that "* * * the United States (should) receive fair market value of the use of public lands and their resources unless otherwise provided for by statute; * * *"

43 U.S.C. 1701(a)(9).[9]

90. In the past the radio frequency spectrum has not been treated as a natural resource to be rented or leased. However, consideration should be given to treating it that way in the future. If the Commission were given legislative authority to obtain "fair market value" for spectrum use, it could collect such fair market value through the use of spectrum fees, auctions or some combination of the two. Spectrum fees could be applied to all users of the spectrum or certain classes of users could be exempted from all spectrum fees or be charged reduced fees, just as users of national parks, wilderness areas, and national forest may pay a charge which is less than the value of the services received, or may pay no service charge at all. Similarly, auctions could be used for all future transmitter applications, or only for selected classes of users in selected bands, especially when there were several mutually exclusive applicants for the same channel. In every case, the purpose would be to charge a price for spectrum use which accurately reflected the value of the spectrum to the user.

91. One result of such charges (whether obtained through direct spectrum fees or through auctions) is that the revenue collected would, in all probability, greatly exceed the current and future operating budget of the Commission. However, this is not an unreasonable result. In recent years the revenues from bonus bids, rentals, and royalties on the lease and production of offshore oil and gas have far exceeded the budget of the Bureau of Land Management and the Geological Survey (both of which agencies deal with many mineral resources besides oil and gas) and in some years have exceeded the entire budget of the Department of the Interior.

92. In the next part of this section we discuss a number of possible examples of how "fair market value" might be measured, and how such fair market value might be collected through the use of spectrum fees or auctions. Thus, a major set of questions to which we seek comments in this section of the notice of inquiry are these:

(a) On what basis should the fair market value of the spectrum be determined?

(b) Would the use of spectrum fees or auctions which are related to spectrum use lead to more efficient use of the spectrum?

(c) Would the use of spectrum fees or auctions which are related to spectrum use allow some nonusers to gain access to the spectrum and/or allow some users to obtain more spectrum? If so, which groups?

(d) Would the use of spectrum fees or auctions which are related to spectrum use force some groups of users to decrease or even completely stop their use of the spectrum? If so, which groups?

(e) Would the use of spectrum fees or auctions have any important positive or negative effects on the quality and quantity of services provided by radio and television broadcasting stations, common carriers, or other users of the spectrum?

(f) Would the use of spectrum fees or auctions which are related to spectrum use create incentives for recipients to use spectrum saving technologies such as narrow band transmitters, lower power transmitters, directional antennas, and shorter antenna towers?

(g) To what extent do Commission technical standards on radio and television signals, and the table of television assignments diminish the usefulness of spectrum fees or auctions?

(h) What is the impact of international treaty obligations on the possibility of using spectrum auctions or fees?

SOME EXAMPLES OF POSSIBLE FORMULAS WHICH RELATE FEES TO SPECTRUM USE

93. If the Commission were to charge users for the right to use the spectrum, one possibility would be to devise a simple formula which related spectrum fees to the amount of spectrum used by any individual user or group of users. If fees were related to the amount of spectrum used, several principles seem clear. The more spectrum anyone uses, the higher should be the fee charged. Similarly, the more valuable is any particular segment of the spectrum based on alternative uses for it, the higher should be the fee.

94. In the past there have been a number of suggestions made for relating spectrum fees to the amount of spectrum used. For example, one suggestion which has been made is that fees might be a function of the product of bandwidth multiplied by the area (or volume) covered by the transmitted signal multiplied by the fraction of the day during which the signal was broadcast multiplied by a power density factor.

Such a relationship might be presented by the following formula:[10]

$$F = a(B)(A)(T)(X).$$

Where:

F = the fee in dollars.
a = a constant.
B = bandwidth in megahertz (taking into account any adjacent channel interference).

Footnotes continued from last page

Chief Engineer, Spectrum Allocations Staff, Report No. SAS 76-01, August 1976; John O. Robinson, "Introduction of Economic Factors into Spectrum Management," MA Thesis, University of Pennsylvania, Annenberg School of Communications, 1974; Bruce M. Owen, "Spectrum Allocation: A Survey of Alternative Methodologies," Office of Telecommunications Policy, Staff Research Paper OTP-SP-4, April 1972; Harvey J. Levin, "Spectrum Allocation Without Market," American Economic Review Papers and Proceedings, 60 (May 1970); pp. 209-218; Nichols Johnson, "Towers of Babel: The Chaos in Radio Spectrum Utilization and Allocation," Law and Contemporary Problems (Summer 1969), 503-534; William H. Meckling, "Management of the Frequency Spectrum," Washington University Law Quarterly (Winter 1968), pp. 26-34; William K. Jones, "Use and Regulation of the Radio Spectrum: Report on a Conference, "Washington University Law Quarterly (Winter 1968), pp. 71-115; "The Crisis in Electromagnetic Frequency Spectrum Management: Abatement Through Market Distribution," Iowa Law Review 53 (October 1967), pp. 437-479; Harvey J. Levin, "New Technology and Old Regulation in Radio Spectrum Management," American Economic Review Papers and Proceedings, 56 (May 1966), pp. 339-349; Harvey J. Levin, "Regulatory Efficiency, Reform and the FCC," Georgetown Law Journal (1961), pp. 1-45.

[9] In August 1978, the House and Senate each passed separate versions of bills which would increase the grazing fees on public lands. Both H.R. 10587 and S. 2475 explicitly mention obtaining "fair market value."

[10] Douglas W. Webbink, "The Value of the Spectrum Allocated to Specific Uses," IEEE Transactions on Electromagnetic Compatability, EMC-19 (August 1977), pp. 346-348; Joint Technical Advisory Committee of the Institute of Electrical and Electronics Engineers, Spectrum Engineering—The Key to Progress (New York: IEEE, 1968), pp. S8-84 through S8-85; R. P. Gifford, "EMC Revisited—1966," IEEE Transactions on Electromagnetic Compatibility, vol. EMC-8 (September 1966), pp. 123-129; Federal Communications Commission, Report of the Advisory Committee for the Land Mobile Radio Services (Washington, D.C.: Government Printing Office, 1967), pp. 409-415.

A = area covered by the transmitted signal or excluded from receiving another signal on those frequencies.
T = fraction of the day that the licensee had exclusive use of those frequencies.
X = power density factor (which measures the effective energy per cycle of the given system relative to the energy per cycle of some "standard" system).

95. Another suggestion which has been made would be to relate fees to the information carrying capacity of the channels available to any particular licensee. Such a system would take into account the number of bits of information transmitted, and thus would be a function of both the bandwidth used and the mode of transmission.[11] This could be expressed as:

$F = c(I)$.

Where:

F = the fee in dollars.
c = a constant.
I = capacity in bits of information in a particular channel.

96. A third alternative which has been suggested would be to make spectrum fees a function of the product of bandwidth multiplied by the population in the area covered by the transmitted signal multiplied by the fraction of the day during which the signal was transmitted. Such a relationship could be represented by the following formula:[12]

$F = d(B)(P)(T)$.

Where:

F = the fee in dollars.
d = a constant.
B = bandwidth in megahertz (taking into account any adjacent channel interference).
P = population in millions receiving the given signal or excluded from receiving another signal on the same frequency.
T = Fraction of a day that the licensee had exclusive use of the frequency.

97. The first formula discussed above implies that 1 kilohertz of spectrum used 24 hours per day has the same value whether if is in the high frequency of the very high frequency band. Similarly, the third formula implies that for the same population (such as every 100,000,000 people) covered 24 hours a day, 1 kilohertz of bandwidth is equally valuable, whether it is at 1.5 MHz, 15 MHz, 150 MHz, or 1,500 MHz. Thus, both formulas imply that every kilohertz has the same value as every other kilohertz.

98. As a more realistic alternative, the spectrum might be broken down into a number of separate segments or zones using the assumption that a kilohertz has equal value within each zone but not necessarily between zones.[13] One reason why a kilohertz may have different values in different zones is that propagation characteristics vary widely across different frequencies. As an example, table 3 below divides the radio frequency spectrum into 12 separate zones. This table was developed using the assumption that propagation characteristics are relatively similar within each separate zone, but are relatively different between zones.

TABLE 3—*An Example of How the Spectrum Might be Zoned*

Frequency zone (in MHz)	Wave length (in meters)
0 to 0.5	600.00.
.5 to 5	600.00 to 60.00.
5 to 20	60.00 to 15.00.
20 to 50	15.00 to 6.00.
50 to 100	6.00 to 3.00.
100 to 300	3.00 to 1.00
300 to 600	1.00 to .50.
600 to 1,000	.50 to .30.
1,000 to 3,000	.30 to .10
3,000 to 6,000	.10 to .05
6,000 to 10,000	.05 to .03.
10,000 to 30,000	.03 to .01.

99. Thus the formulas suggested above might be sparately applied to each band or zone, with the constant term "a" or "c" or "d" having a different value in each zone.

100. The use of these 12 bands or zones, with different values per kilohertz of spectrum would be analoguous to the zoning of land. In any city, land may have one value per acre if it is zoned for single family homes, a second value per acre if it is zoned for apartment houses, a third value if it is zoned for retail use, and a fourth value if it is zoned for heavy manufacturing.

101. The proposed 12 zones based upon differences in propagation characterics would attempt to take into account one reason why some frequenceis are more valuable than others. It should be noted however, that these zones do not explicitly take in to account any of the other reasons why some bands may be more valuable than others. For example, allocation plans and assignments have limited the number of transmitters (especially TV and radio broadcasting station transmitters) in certain large cities, and have made certain VHF television and AM broadcasting channels especially valuable. Thus, it has been argued that the profits earned by some broadcasting stations is one indication of the value of the spectrum.[14] Presumably, therefore, one might wish to relate spectrum fees to the profits earned by certain classes of spectrum users.

102. It is also possible that spectrum fees should be related in some continuous way to the frequency being used, rather than having discrete changes in the level of fees from one zone to the next. For example, it might be more accurate to asume that:

$F = e(1/M)(B)(P)(T)$.

Where:

F = fee in dollars.
e = a constant.
M = frequency in megahertz.
B = bandwidth in megahertz.
P = population in millions receiving the given signal or excluded from receiving another signal on the same frequency.
T = fraction of the day that the licensee had exclusive use of the frequency.

103. In that case, the fee per kilohertz would vary inversely with frequency, so the highter the frequency the lower would be the fee. One can also imagine more complicated formulas which include more variables and where the relationship is not a simple linear function of the product of each of the independent variables.

104. Several of the proposed formulas reflect the fact that the use of 6 MHz of VHF television spectrum to cover 10,000 square miles in the New York City area is far more valuable than the use of 6 MHz of VHF television spectrum which covers 10,000 square miles in the Salt Lake City area. One reason why the spectrum may be more valuable in New York City is that it covers an area with a higher population density and thus a higher total population (as well as a higher per capita income). Hence, the demand for spectrum for alternatives uses is much greater in New York City and the fee charged for its use would be much greater. (In fact, it is conceivable that a spectrum fee should depend upon the per capita income in a particular location, as well as the total population covered by the signal).

105. It should be noted that most of these formulas imply that 1 kilohertz

[11] Kenneth A. Norton, "FCC Fee Allocation," TV Communications (May 1970), pp. 18-23. In calculating this formula, Norton suggests using bandwidth and the signal to noise ratio following Shannon. See Claude E. Shannon, "The Mathematical Theory of Communication," Bell System Technical Journal (July and October 1948).

[12] D. W. Webbink, "Setting FCC License Fees According to Frequency Spectrum: A Suggestion," IEEE Transactions on Broadcasting, BC-17 (September 1971), pp. 64-69.

[13] See: "Frequency and Orbit," ch. 13 of Seyom Brown, Nina W. Cornell, Larry L. Fabian, and Edith Brown Weiss, Regimes for the Ocean, Outer Space, and Weather (Washington, D.C.: The Brookings Institution, 1977), pp. 193-194; and William K. Jones, "Use and Regulation of the Radio Spectrum: Report on a Conference," Washington University Law Quarterly, (winter 1968), pp. 103-105.

[14] See, for example: Robert W. Crandall, "Placing a Value on the Electromagnetic Spectrum: A Suggested Approach for FCC Decisionmaking," paper presented at the fifth Annual Telecommunications Research Policy Conference, Airlie, Va., Mar. 31, 1977; and Harvey Levin, "Economic Effects of Broadcast Licensing," Journal of Political Economy, 72 (April 1964), pp. 151-162. See also footnotes 7, 8, and 10 supra.

of UHF spectrum in a particular city which is used to cover the same population has the same value, whether it is used by a television station, a business radio system, or a police radio system. It should also be noted that with most of these particular formulas, spectrum used or reserved only 12 hours per day would pay a fee of one-half the amount of spectrum used or reserved 24 hours per day. Those formulas do not distinguish between whether the 12 hours are from 8 a.m. to 8 p.m., or from 8 p.m. to 8 a.m. Similarly, the formulas imply that if 10 land mobile systems share the same 30 KHz channel in a particular city, they would each pay 1/10 the total spectrum fee for that channel.

106. Most of the formulas also imply that if four VHF television stations all operate in the same city and each cover the same population with the same signal, each would pay the same or nearly the same fee, regardless of their revenue, net income and whether or not they were affiliated with a national network.

107. It should be noted that the use of any kind of spectrum fee based on area or population covered by a signal or excluded from receiving some other signal assumes it is possible to determine the area of coverage or the area of exclusion of different signals on the same frequency, even though radio signals do not actually cease at discrete boundaries. While any such determination of the area of service must be arbitrary, the Commission's rules already do so for certain services when they determine the area or radius within which a particular signal is protected. Moreover, there have been many suggestions for methods of defining the appropriate geographic coverage of any signal.[15]

[15] See, for example: Charles L. Jackson, "Technologies for spectrum Usage Charges," paper presented at the fifth Annual Telecommunications Policy Research Conference, Airlie, Va., Mar. 31, 1978; Leslie A. Berry, "spectrum Metrics and spectrum Efficiency: Proposed Definitions," IEEE Transactions on Electromagnetic Compatibility, EMC-19 (Aug. 1977), PP. 254-260; Charles L. Jackson, "Technology for spectrum Markets," Massachusetts Institute of Technology, Department of Electrical Engineering and Computer Science, unpublished Ph. D. Thesis, 1976; Jora R. Minasian, "Property Rights in Radiation: An Alternative Approach to Radio Frequency Allocation,". Journal of Law and Economics, XVIII (April 1975), pp. 221-272; Donald R. Ewing and Leslie A. Berry, Metrics for spectrum-Space Usage, U.S. Department of Commerce, Office of Telecommunications, OT report 73-24 (November 1973); Arthur S. DeVany, Ross D. Eckert, Charles D. Meyers, Donald J. O'Hara, and Richard C. Scott, "A Property System for Market Allocation in the Electromagnetic spectrum: A Legal-Economic-Engineering Study", Stanford Law Review, 21 (1969), pp. 1499-1561; L. A. Rose, "Marketable spectrum Rights," IEEE International Conference on Communications, Conference Record (1969), pp. 13-7 to 13-12; A. DeVany, R. Eckert, S. Enke, D. O'Hara, and R. Scott, Electromagnetic spectrum Management: Alternatives and Experiments (Santa Barbara: GE Tempo, 1968), reprinted as app. G of The Use and Managment of the Electromagetic spectrum, pt. 2, Staff Paper 7, The President's Task Force on Communications, 1968.

108. Finally it should be noted that the value of the constant term in any of the proposed formulas could be adjusted downward if Congress required revenues to be constrained to something less than the fair market value of the whole radio spectrum. If the Commission were to price spectrum at its fair market value, the constant term in any of the formulas would undoubtedly result in total spectrum fees collected that would equal many times the Commission's operating budget, just as revenues from lease bids and royalties on offshore oil and gas rights greatly exceed the cost of running that program by the Department of the Interior. At full fair market levels, spectrum fees could be somewhat less than what it would cost users to move to their next best alternative, or what users would be willing to pay for additional channels, or what nonusers would be willing to pay for access to the spectrum. For example, fees might be set at a rate somewhat below what users would be willing to pay to operate a land mobile system at 150 MHz using relatively inexpensive trnsceivers rather than at 900 MHz using more expensive transceivers.[16] Similarly, fees for VHF television channels in large cities might be set in such a way as to reflect what applicants (or viewers) would be willing to pay for all additional VHF television channel in that city. For example, one measure of the value to viewers of another VHF station would be the amount viewers would spend on powerful directional antennas to receive distant signals, or on receiving distant signals over a CATV system.

109. To implement such an approach the Commisson could start by using a value of the constant term in any of the proposed formulas which was believed to be lower than the "correct" value. If it became obvious in the first few years that the number of potential users willing to pay the specified fees still greatly exceed the number of channels available in some bands and in some cities, then the fee formula could be gradually adjusted upward until the number willing to pay was more closely equal to the number of channels available.

110. The use of any of these proposed formulas or others that might be more appropriate to measure the value of the spectrum and thus to collect spectrum fees by the Commission raises many questions. For example:

(a) Do any of these formulas adequately measure the value of the spectrum? If not, would some other formula or formulas do a better job? If no formula were adopted, is there some other method of setting fees in relation to the value of the spectrum?

(b) If these or other similar formulas were adopted, should it be assumed that 1 kilohertz has the same value regardless of the band in which it is located?

(c) If these or other similar formulas were adopted and it was assumed that a kilohertz has a different value in different bands, do the proposed set of bands or the fourth proposed formula adequately reflect that difference?

(d) If it were assumed that the proposed set of different bands correctly indicate differences in the value of the bands, how should charges across bands be related to each other? For example, should the charge per KHz in the 1-3 GHz band be more than the charge for the 3-6 GHz band? If so, how much more?

(e) If these or similar formulas were adopted, is it reasonable to assume that the value of the spectrum varies inversely with the frequency? Should the relationship between spectrum value and frequency be more complicated? For example, should the relationship be expressed in logarithms, or should it be assumed that the relationship follows some kind of a normal distribution?

(f) If these or similar formulas were adopted, should the fee be related to the population contained within the area served by the signal, or the population excluded from receiving any other signal on the same frequency?

(g) If these or other similar formulas were adopted, would it be possible to use existing Commission regulations and authorizations to determine the population covered by a particular signal and excluded from receiving another signal?

1. For example, would a grade A or B contour be an adequate basis for determining population covered by a television signal?

2. Would the use of some other measure such as net weekly circulation be preferable?

3. Similarly, would the zone for which any land mobile transmitter antenna is protected from the location of another antenna on the same frequency adequately reflect the population covered by the signal? How should po-

[16] See footnotes 7, 8, and 14, supra. See also: Howard Allen Plotkin, "Measurement and Analysis of Some Economic Effects of Land Mobile Radio Congestion," Ph. D. Dissertation, Stanford University, 1972; and Douglas W. Webbink, "How Not to Measure the Value of a Scarce Resource: The Land Mobile Controversy," Federal Communications Bar Journal, XXIII (1969), pp. 202-209.

tential interference on adjacent frequencies be dealt with?

4. Are there appropriate measures of the area covered for microwave and satellite facilities?

5. For example, in the case of satellites, would some other formula which takes into account both the population covered due to the beam width of the satellite, and the number of orbital slots be more accurate? Are all orbital slots of equal value?

6. Can the proposed formulas deal with satellite receive only stations which are protected from interference?

(h) If these or other similar formulas were adopted, should the fee depend upon the fraction of the day when the licensee was authorized to transmit a signal? Are all time periods of the day of equal value? If not, are the time periods of maximum value the same for all services?

(i) If these or other similar formulas were adopted, is it reasonable to assume that the relationship between the fee levels and the factors in the formula is a linear one? In other words, is it reasonable to assume that doubling bandwidth or doubling population covered should precisely double the fee?

(j) If these or other similar formulas were adopted, should radio and television broadcasting stations be treated differently than other users of the spectrum who were located in adjacent portions of the MF, VHF, or UHF spectrum?

(k) If these or other similar formulas were adopted, should some classes of users of the frequency spectrum be exempted from license fees or be charged lower fees? For example, should the public safety radio services, and State, county, and local governments, and noncommercial broadcasters be charged a reduced fee, or pay no fee at all? How should spectrum which is shared with Federal Government users be handled?

(l) If these or other similar formulas were used to collect fees, how should the total size of the fees collected be determined? In other words, with regard to the proposed formulas, how should the value of a or c or d be determined?

AUCTIONS

111. As an alternative or a supplement to license fees, some portions of the spectrum might be leased or rented to users on the basis of the highest bid in an auction. This would be easiest to administer and possibly least controversial as a test if certain nonbroadcast channels in specific cities were leased using an auction in cases where there were several competing or potentially competing applicants.[17] Possible candidates for auctions might be the multipoint distribution service, radio common carrier channels, and business radio channels. Not only would the use of such auctions allow the Federal Government to capture directly and immediately some of the "fair market value" of the spectrum, but it would also provide some indication of how some limited classes of users valued the spectrum. Thus, it would provide some information about the correct level of spectrum fees to be charged various classes of users. Many of the same general kinds of questions which were raised about spectrum use fees above can also be asked about auctions. Additionally, questions arise concerning the extent, if any, to which we should permit transfers of licenses between qualified users within the same generic class (e.g., land mobile radio service) or between classes (e.g., land mobile and broadcasting service).

[17] See John O. Robinson, "Assignment of Radio Channels in the Multipoint Distribution Service by Auction," paper presented at the sixth Annual Telecommunications Research Policy Conference, May 12, 1978; see also footnotes 7, 8, 14, 15, and 16 supra.

CONCLUSION

112. We welcome and encourage comments on specific questions which we have raised as well as on any of the issues which have been presented in this notice of inquiry. In addition we have instructed the Commission's staff to hold a public meeting in early October to discuss the refund system, to explain the reasons for its design in the present form, to answer any questions, and to receive and give consideration to recommendations for changes in the refund system. Public notice of the time and location of this meeting will be made shortly.

113. For the purpose of receiving written comments, we have decided to divide this inquiry into two sections. Written comments related to the fee refund section of the inquiry (discussed in part B above and in the attachments) must be submitted by November 8, 1978. Written comments relating to adoption of a new fee schedule under present statutory authority for prospective application and to future spectrum fees under new statutory authority (parts C and D above) must be submitted by January 8, 1979. Section 1.419 of the Commission's rules requires that the original and five copies of comments be filed. Comments should be sent to: Secretary, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION,
William J. Tricarico,
Secretary.

ATTACHMENT A.—*Cost Based Fee Schedule*

Year of fee	Category	Branch cost	Bureau and office division cost	Adjudicatory cost	Comm. GC OPP cost	Total
Chief Engineer:						
1970	13-10-0010, certification, TV receiver	$15.16	$1.77		$1.89	$19.00
1970	13-10-0011, certification, FM receivers	14.27	1.67		1.82	18.00
1970	13-10-0012, certification, all others	14.27	1.67		1.82	18.00
1970	13-10-0020, prototype certification, pt. 18	17.81	2.09		2.08	22.00
1970	13-10-0030, certification, model TV receiver	15.16	1.77		1.89	19.00
1970	13-10-0031, certification, model FM receiver	14.27	1.67		1.82	18.00
1970	13-10-0033, certification, model, all others	14.27	1.67		1.82	18.00
1970	13-10-0050, certification, door opener	14.27	1.67		1.82	18.00
1975	13-10-0051, certification equipment other than receivers, pt. 15.	44.12	21.59		3.34	69.00
1970	13-10-0052, certification, field sensor	16.04	1.88		1.95	20.00
1970	13-10-0053, certification biomedical	15.60	1.83		1.92	19.00
1970	13-20-0001, type acceptance—Each equipment type	53.17	6.22		4.41	64.00
1970	13-20-0002, type acceptance—Addition of radio services.	25.29	2.96		2.36	31.00
1970	13-20-0003, type acceptance—Subscription TV	323.30	37.85		21.50	383.00
1975	13-20-0004, type acceptance—EBS, pt. 73	33.45	16.37		2.63	52.00
1970	13-30-0010, type approval, 73 broadcast modulation monitors—SCA.	1,888.18	780.60		163.80	2,833.00
1970	13-30-0011, type approval, 73 broadcast modulation monitor—Other.	983.38	406.52		85.80	1,476.00

ATTACHMENT A.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and office division cost	Adjudicatory cost	Comm. GC OPP cost	Total
1970	13-30-0012, type approval, 73, other equipment	983.33	406.52		85.80	1,476.00
1970	13-30-0020, type approval, 81, ship transmitters	1,163.89	481.17		104.00	1,749.00
1970	13-30-0021, type approval, 81, ship radar	798.61	330.16		57.20	1,186.00
1970	13-30-0022, type approval, 81, ship, automatic, systems.	7,721.95	3,192.35		676.00	11,590.00
1970	13-30-0023, type approval, pt. 81 keyers	482.18	199.34		44.20	726.00
1970	13-30-0024, type approval, 81, maritime devices	482.18	199.34		44.20	726.00
1970	13-30-0030, type approval, 15, wireless microphone	421.66	174.32		36.40	632.00
1970	13-30-0031, type approval, 15, other	421.66	174.32		36.40	632.00
1970	13-30-0040, type approval, 18, medical diathermy	421.66	174.32		36.40	632.00
1970	13-30-0041, type approval, 18, epilators	427.12	176.12		36.40	640.00
1970	13-30-0042, type acceptance, 18, microwave ovens	563.30	232.88		46.80	843.00
1970	13-30-0043, type approval, 18, medical ultrasonic	373.39	154.36		31.20	559.00
1970	13-30-0044, type approval, 18, industrial ultrasonic	373.39	154.36		31.20	559.00
1970	13-30-0045, type approval, 18, other	421.66	174.32		36.40	632.00
1970	13-30-0050, type approval, modification retesting, 73 and 18.	(*)				
1970	13-30-0051, type approval, modification retesting, 15 and 81.	(*)				
1970	13-30-0052, type approval, modification, all other	50.19	20.75		3.90	75.00
1970	13-30-0060, type approval, no testing required	10.46	4.32		.98	16.00
1975	13-30-0061, type approval correction of deficiency	(*)				
Common Carrier Bureau:						
1970	16-10-1001, construction or relocation of base station	$197.40	$46.83	$12.40	$14.92	$272.00
1970	16-10-2002, construction or relocation of dispatch station.	50.98	12.09	12.40	4.00	79.00
1971	16-10-3002, modification construction permit other than initial.	106.00	25.15	12.40	9.10	153.00
1970	16-10-3004, modification of construction permit or license for base station.	79.88	18.95	12.40	6.15	117.00
1970	16-10-4002, base station license renewal	79.94	18.97	12.40	4.76	116.00
1970	16-10-5002, dispatch station license renewal	1.39	.33	12.40	.16	14.00
1970	16-10-6001, modification of renewal of license for individual mobile stations.	5.58	1.32	12.40	.81	20.00
1970	16-10-6002, modification of renewal of license for individual mobile stations.	5.58	1.32	12.40	.81	20.00
1970	16-10-6003, application for license for each additional mobile unit.	5.58	1.32	12.40	.81	20.00
1970	16-20-1002, construction permit or relocation of central office.	46.59	11.05	12.40	3.86	74.00
1970	16-20-1501, modification of construction permit for central office.	24.40	5.79	12.40	2.33	45.00
1970	16-20-3002, operation of rural subscriber station at temporary fixed locations.	23.99	5.69	12.40	2.39	44.00
1970	16-20-4002, license or modification for individual subscribers stations.	11.41	2.71	12.40	1.15	28.00
1970	16-20-5002, license renewal of rural subscriber station.	6.74	1.60	12.40	.65	21.00
1970	16-20-6001, license renewal for central office station	6.74	1.60	12.40	.65	21.00
1975	16-20-7002, initial construction permit	52.37	7.14	15.23	2.93	78.00
1975	16-20-8002, other than initial construction permit	28.82	3.93	15.23	1.41	49.00
1971	16-20-9002, construction permit other than initial license for rural subscriber.	23.06	5.47	12.40	2.36	43.00
1970	16-30-1001, construction permit or modification to change communication points.	92.80	19.19	12.40	7.96	132.00
1970	16-30-2001, operation of station at temporary fixed locations.	37.28	7.73	12.40	3.90	61.00
1970	16-30-3001, modification of construction permit or license.	32.40	6.72	12.40	3.25	55.00
1970	16-30-4001, license renewal	48.08	9.97	12.40	4.23	75.00
1970	16-40-1001, construction permit or modification to add or change communication points.	92.60	19.20	12.40	7.96	132.00
1970	16-40-2001, license for operation of STL station	91.27	18.93	12.40	7.80	130.00
1970	16-40-3001, license for operation of mobile TV pick-up station.	37.28	7.73	12.40	3.90	61.00
1970	16-40-4001, modification of license	32.45	6.73	12.40	3.25	55.00
1970	16-40-5001, license renewal	48.08	9.97	12.40	4.23	75.00

ATTACHMENT A.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and office division cost	Adjudicatory cost	Comm. GC OPP cost	Total
1970	16-51-1001, initial construction permit for new station	243.68	50.53	12.40	17.23	324.00
1970	16-51-2001, authorized station location change	(1)				
1970	16-51-4001, license modification	158.58	32.88	12.40	11.70	216.00
1970	16-51-5001, license renewal	329.00	68.23	12.40	24.05	434.00
1970	16-52-1001, construction permit for new station or additional transmitter.	(1)				
1970	15-52-2001, construction permit for replacement transmitter.	36.16	7.49	12.40	3.25	59.00
1970	16-52-3001, authorized station location change	(1)				
1970	16-52-4001, license modification	34.02	7.06	12.40	3.25	57.00
1970	16-52-5001, license renewal	34.02	7.06	12.40	3.25	57.00
1970	16-60-1002, assignment or transfer	83.04	17.22	12.40	5.85	119.00
1970	16-60-1004, assignment or transfer	83.04	17.22	12.40	7.54	120.00
1970	16-60-2001, all other	34.50	7.16	12.40	3.90	58.00
1970	16-70-1002, construction permit for Earth station	977.74	202.75	12.40	61.43	1,254.00
1970	16-70-1102, construction permit for commercial receive-only Earth station.	135.39	28.08	12.40	11.66	188.00
1970	16-70-1201, developmental Earth station	116.63	24.18	12.40	10.56	164.00
1970	16-70-1301, renewal license for developmental station	39.27	8.14	12.40	3.90	64.00
1970	16-70-1401, additional equipment-existing commercial Earth station.	68.27	14.15	12.40	6.18	101.00
1970	16-70-1501, operate transportable Earth station fixed site.	110.55	22.93	12.40	9.43	155.00
1970	16-70-1601, renewal Earth station license	32.98	8.29	12.40	3.90	58.00
1970	16-70-1602, license renewal-commercial transmit-receive Earth station.	87.95	18.23	12.40	7.48	126.00
1970	16-70-1603, license renewal-commercial transmit-receive Earth station.	52.54	10.89	12.40	4.88	81.00
1970	16-70-1801, construction permit or license-auxiliary station to Earth station.	262.21	54.37	12.40	23.56	353.00
1970	16-70-1901, renewal license of auxiliary station	39.78	8.25	12.40	4.23	65.00
1970	16-70-2002, initial construction permit per satellite	10,171.58	2,109.25	12.40	608.40	12,902.00
1970	16-70-2102, authority to launch and operate satellite	1,617.55	335.43	12.40	95.55	2,061.00
1970	16-70-2202, assignment commercial transmit-receive Earth station.	1,857.72	385.23	12.40	108.62	2,364.00
1970	16-70-2302, assignment commercial receive only or transportable Earth station.	73.87	15.32	12.40	5.90	107.00
1970	16-70-2401, stock in Comsat	50.61	10.49	12.40	3.90	77.00
1970	16-70-2501, other application under Communication Satellite Act.	39.78	8.25	12.40	4.23	65.00
1975	16-75-1002, relocation station or addition or change frequencies.	1,675.47	127.26	15.23	80.59	1,899.00
1975	16-75-1101, modification of construction permit or license.	43.08	3.27	15.23	2.84	64.00
1975	16-75-1201, license renewal	64.62	4.91	15.23	4.26	89.00
1970	16-80-1001, sec. 214—construction landline coaxial cable.	539.75	111.92	12.40	36.40	700.00
1970	16-80-1102, sec. 214—construction voice cables	230.27	47.75	12.40	16.90	307.00
1970	16-80-1105, sec. 214—construction voice cables	7,296.14	1,512.98	12.40	490.10	9,312.00
1970	16-80-1201, sec. 214—facility lease	146.69	30.42	12.40	13.00	203.00
1970	16-80-1301, sec. 214—overseas cable construction	36,102.97	7,486.59	12.40	1,976.00	45,578.00
1970	16-80-1401, sec. 214—establish communication channels.	193.20	40.06	12.40	11.70	257.00
1970	16-80-1501, cable landing license	121.01	25.09	12.40	9.10	168.00
1970	16-80-1602, overseas cable channels	946.43	196.26	12.40	62.40	1,217.00
1970	16-80-1712, domestic to international outside United States.	117.89	24.44	12.40	10.40	165.00
1970	16-80-1722, domestic to international within United States.	928.58	192.55	12.40	55.64	1,189.00
1970	16-80-1801, carrier equipment at Earth station	347.96	72.15	12.40	23.40	456.00
1970	16-80-1901, sec. 214-establish satellite channels	265.71	55.10	12.40	20.80	354.00
1970	16-80-2002, acquire satellite channels	211.53	43.86	12.40	15.21	283.00
1970	16-80-2122, discontinue service telephone companies	230.34	47.77	12.40	15.96	306.00
1970	16-80-2132, discontinue service telegraph companies	12.39	2.56	12.40	.94	28.00
1970	16-80-2141, discontinue service public coast station	11.91	2.47	12.40	.90	28.00
1975	16-80-2147, discontinue service all other	17.39	1.32	15.23	1.03	35.00
1970	16-80-2152, interlocking directorate applications	58.92	12.22	12.40	4.23	88.00

ATTACHMENT A.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and office division cost	Adjudicatory cost	Comm. GC OPP cost	Total
1970	16-80-2162, sec. 221—applications	107.53	22.30	12.40	7.80	150.00
1970	16-80-2171, tariff applications	25.09	4.23	12.40	1.95	44.00
1970	16-80-2181, all other	2,412.54	500.28	12.40	139.10	3,064.00
1975	16-80-2501, lease satellite domestic use	202.01	15.34	15.23	14.20	247.00
1975	16-80-2702, install or acquire equipment on overseas cable.	1,559.62	118.46	15.23	78.24	1,772.00
1975	16-80-2802, lease channels overseas cable or radio	952.76	72.37	15.23	45.83	1,086.00
1971	16-80-2926, acquire satellite channels international use.	211.53	43.86	12.40	15.21	283.00
1975	16-90-1002, tariff file under 1 million	30.26	4.00	15.23	1.64	51.00
1975	16-90-2002, tariff file, 1 million to 100 million	116.03	15.30	15.23	6.03	153.00
1975	16-90-3002, tariff file, 100 million to 1 billion	152.88	20.18	15.23	7.91	196.00
1975	16-90-4002, tariff file, 1 billion to 10 billion	22.47	3.14	15.23	1.35	42.00
1975	16-90-5002, tariff file over 10 billion	245.92	25.46	15.23	7.23	294.00
1970	16-95-0002, special temporary authority	34.02	8.07	12.40	3.37	58.00
Safety and Special:						
1970	17-11-0001, interim ship	$3.47		$5.80	$.55	$10.00
1970	17-12-0001, public coast—initial, renewal	32.87		5.80	2.93	42.00
1970	17-12-0002, public coast assignment	17.40		5.80	1.95	25.00
1970	17-13-0001, marine microwave	14.33		5.80	1.98	22.00
1970	17-21-0001, operational fixed-initial, renewal	7.43		5.80	.88	14.00
1970	17-21-0002, operational fixed—assignment	7.43		5.80	.88	14.00
1970	17-22-0001, industrial land—microwave	7.21		5.80	.85	14.00
1975	17-23-0001, 806-947 MHz commercial service	(1)				
1970	17-31-0001, aviation—microwave, new, renewal, assignment.	7.21		5.80	.85	14.00
1970	17-41-0001, special call	2.44		5.80	.36	9.00
Broadcast Bureau:						
1970	18-10-0002, construction permit, VHF, 50, nondirectional.	$1,053.37	$279.84	$222.86	$68.25	$1,624.00
1970	18-10-0004, construction permit, UHF, 50, nondirectional.	948.25	251.90	222.86	61.49	1,485.00
1970	18-10-0006, construction permit, VHF, next 50, nondirectional.	1,053.37	279.84	222.86	68.25	1,624.00
1970	18-10-0008, construction permit, UHF, next 50, nondirectional.	1,053.37	279.84	222.86	68.25	1,624.00
1970	18-10-0010, construction permit, VHF, balance, nondirectional.	987.67	262.38	222.86	64.03	1,537.00
1970	18-10-0012, construction permit, UHF, balance, nondirectional.	987.67	262.38	222.86	64.03	1,537.00
1970	18-10-0014, construction permit, FM, A, nondirectional.	389.59	103.50	222.86	35.75	752.00
1970	18-10-0016, construction permit, FM, B and C, VND	438.61	116.52	222.86	39.98	818.00
1970	18-10-0018, construction permit, AM, day, 50, nondirectional.	480.37	127.61	222.86	50.38	881.00
1970	18-10-0028, construction permit, AM, day, 500, nondirectional.	480.37	127.61	222.86	50.38	881.00
1970	18-10-0022, construction permit, AM, day, 10, nondirectional.	(1)				
1970	18-10-0024, construction permit, AM, day, 5, nondirectional.	328.52	87.27	222.86	34.91	674.00
1970	18-10-0026, construction permit, AM, day, 1, nondirectional.	328.52	87.27	222.86	34.91	674.00
1970	18-10-0028, construction permit, AM, day, 500, nondirectional.	328.52	87.27	222.86	34.91	674.00
1970	18-10-0030, construction permit, AM, day, 250, nondirectional.	328.52	87.27	222.86	34.91	674.00
1970	18-10-0032, construction permit, AM, IV, nondirectional.	499.69	132.74	222.86	45.24	901.00
1970	18-11-0001, construction permit—directional antenna, VHF/UHF.	20.63	5.48	222.86	1.30	250.00
1970	18-11-0004, construction permit—directional antenna, AM, day.	20.42	5.43	222.86	1.30	250.00
1970	18-11-0006, construction permit—directional antenna, AM, unlimited.	927.72	246.45	222.86	88.66	1,486.00
1970	18-21-0001, other—316—AM	24.94	3.70	222.86	2.60	254.00
1970	18-21-0002, other—316—FM	24.94	3.70	222.86	2.60	254.00
1970	18-21-0003, other—316—TV	24.94	3.70	222.86	2.60	254.00

ATTACHMENT A.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and office division cost	Adjudicatory cost	Comm. GC OPP cost	Total
1970	18-22-0001, construction permit—replace expired permit—AM.	15.09	4.01	222.86	1.46	243.00
1970	18-22-0002, construction permit—replace expired permit—FM.	15.09	4.01	222.86	1.46	243.00
1970	18-22-0003, construction permit—replace expired permit—TV.	15.09	4.01	222.86	1.46	243.00
1970	18-22-0004, construction permit—replace expired permit—auxiliary.	6.13	1.63	222.86	.81	231.00
1970	18-23-0001, application for minor changes—AM	222.16	59.02	222.86	17.44	521.00
1970	18-23-0002, application for minor changes—FM	21.47	5.70	222.86	1.95	252.00
1970	18-23-0003, application for minor changes—TV	387.33	102.80	222.86	25.68	739.00
1970	18-25-0002, change call sign—AM	18.70	1.17	222.86	2.08	245.00
1970	18-25-0004, change call sign—FM	18.70	1.17	222.86	2.08	245.00
1970	18-25-0006, change call sign—TV	23.34	1.46	222.86	2.37	250.00
1970	18-26-0001, all other applications—AM	60.92	16.19	222.86	4.55	305.00
1970	18-26-0002, all other applications—FM	60.92	16.19	222.86	4.55	305.00
1970	18-26-0003, all other applications—TV	91.91	24.41	222.86	7.48	347.00
1970	18-26-0004, experimental and developmental applications.	869.34	230.94	222.86	66.95	1,390.00
1970	18-40-0001, application for subscriptions—TV—filing	870.92	231.36	222.86	64.68	1,390.00
1970	18-51-0002, application for assignments transfer	225.53	33.45	222.86	16.06	498.00
1970	18-60-0001, STA	7.61	2.03	222.86	.65	233.00
1970	18-70-0002, annual license fees—AM/FM	70.98	10.52	222.86	19.06	323.00
1970	18-70-0004, annual license fees—TV	66.23	9.83	222.86	18.32	317.00
1970	20-10-0001, CARS—construction permit	117.76	97.82	257.70	8.06	481.00
1970	20-20-0001, petition for special relief, 76.7	434.75	787.65	257.70	32.50	1,513.00
1970	20-20-0002, petition for special relief, 74.1109	485.69	201.26	257.70	31.53	976.00
1970	20-20-0003, petition for experimental operations	486.39	881.21	257.70	32.01	1,657.00
1970	20-20-0004, petition for waiver of hearings	486.39	201.62	257.70	32.01	978.00
1970	20-30-0001, certificates of compliance—routine	52.94		257.70	4.93	316.00
1970	20-30-0002, certificates of compliance—nonroutine	520.12		257.70	39.64	817.00
1970	20-50-0001, special temporary authority	69.40	7.04	257.70	5.33	339.00

*These fees are 75 pct of the fee for the original specific equipment category and are related to resubmissions and/or retesting.
'None received.

OFFICE OF CHIEF ENGINEER

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
	Certification			
13-10-0010	Application for certification of each receiver model—television receivers	$19	$50	$250
	Application for certification each receiver model—combination TV/FM broadcast receiver (1975).	19	90	300
13-10-0011	Application for certification of each receiver model—FM receivers	18	40	150
	Application for certification of each receiver model—combination TV/FM broadcast receiver (1975).	18	90	300
13-10-0012	Application for certification of each receiver model—all others	18	35	150
13-10-0020	Application for prototype certification of equipment operating under pt. 18.	22	25	150
13-10-0030	Request for modification of a certified receiver with no change in model number—television receivers.	19	40	
13-10-0031	Request for modification of a certified receiver with no change in model number—FM receiver.	18	25	
13-10-0033	Request for modification of certificated receiver with no change in model number—all others.	18	25	
13-10-0050	Application for certification of a radio control transmitter for a door-opener under pt. 15, 1971.	18	25	
13-10-0051	Application for certification of equipment (other than receivers) operating under pt. 15, 1975.	69		150
13-10-0052	Certification, field disturbance sensor, 1972	20	150	
13-10-0053	Certification, transmitter for biomedical telemetry equipment under pt. 15, 1972.	19	35	

OFFICE OF CHIEF ENGINEER—Continued

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
	Type acceptance			
13-20-0001	Applications for type acceptance of each equipment type	64	100	200
13-20-0002	Application for the addition of one or more radio services to existing type acceptance for each equipment type as identified by manufacturer (or trade name) and type number.	31	100	150
13-20-0003	Approval of subscription television systems	333	1,000	1,500
13-20-0004	Application for tpye acceptance for EBS attention signal encoder operating under pt. 73, 1975.	52	.....	200
	Type approval			
13-30-0010	Application or submission for type approval, pt. 73, broadcast modulation monitors—SCA and stereo.	2,833	500	3,200
13-30-0011	Application or submission for type approval, pt. 73, broadcast modulation monitors—other.	1,476	250	1,600
13-30-0012	Application or submission for type approval, pt. 73, other broadcasting equipment.	1,476	250	1,600
		1,476		3,200
13-30-0020	Application or submission for type approval, pt. 81 ship transmitters including lifeboat transmitters.	1,749	150	1,600
13-30-0021	Application or submission for type approval, pt. 81, ship radar	1,186	100	1,200
13-30-0022	Application or submission for type approval, pt. 81, ship automatic alarm system.	11,159	250	4,000
13-30-0023	Application or submission for type approval, pt. 81, ship alarm automatic keyers.	726	100	1,000
13-30-0024	Application or submission for type approval, pt. 81, other maritime devices	726	200	1,000
13-30-0030	Application or submission for type approval, pt. 15, wireless microphones	632	150	600
13-30-0031	Application or submission for type approval, pt. 15, other low-powered devices.	632	100	600
	Application or submission for type approval, pt. 15, auditory training transmitters, 1975.	632	.....	1,000
	Application or submission for type approval, pt. 15, class I TV device if rated to operate on 1 or 2 channels, 1975.	632	.....	2,000
	Application or submission for type approval, pt. 15, class I TV device if rated to operated on more than 2 channels, for each channel over 2, 1975.	632	.....	1,000
13-30-0040	Application or submission for type approval, pt. 18, medical diathermy	632	500	1,000
13-30-0041	Application or submission for type approval, pt. 18 epilators	640	500	.....
13-30-0042	Application or submission for type approval, pt. 18, microwave ovens, medical diathermy.	843	1,000	1,200
13-30-0043	Application or submission for type approval, pt. 18, medical ultrasonic	539	250	800
13-30-0044	Application or submission for type approval, pt. 18, industrial ultrasonic	359	250	.....
13-30-0045	Application or submission for type approval, pt. 18, other ISM devices	882	250	1,000
13-30-0050	Application for modification of existing type approved equipment, modifications which require retesting, pts. 73 and 18.	(*)	250	(*)
13-30-0051	Application for modification of existing type approved equipment, modifications which require retesting, pts. 15 and 81.	(*)	100	(*)
13-30-0052	Application for modification of existing type approved equipment, all modifications.	75	50	100
13-30-0060	Application for type approval of equipment not requiring tests, 1975	16	.....	100
13-30-0061	Correction of equipment deficiencies. Application for type approval where unit had previously been rejected for deficiency and is resubmitted for testing, 1975.	(*)	.....	(*)

COMMON CARRIER BUREAU

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
	Domestic public land mobile radio service			
16-10-1001	Application for initial construction permit or for relocation of a base station, including authority for mobile units, blanket dispatch station authority, and standby transmitters without independent radiating systems.	272	250	Var.
16-10-2002	Application for initial construction permit or for relocation of a dispatch station, control station or repeater station.	79	125	75
16-10-3002	Application for other than intital construction permit, modification of construction permit or license for base station, dispatch station, auxiliary test station control station or repeater station at an existing station location, 1971.	153	75	30
16-10-3004	Application for modification of construction permit or license for base station, dispatch station, control station or repeater station at an existing station location.	117	75	
16-10-4002	Application for renewal of license for base station	116	150	Var.
16-10-5002	Application for renewal of license for dispatch station, control station, or repeater station.	14	60	35
16-10-6001	Application for license, modification of license or renewal of license for individual mobile station—per mobile unit.	20	50	
16-10-6002	Application for license, modification of license or renewal of license for individual mobile stations—1 mobile unit per application, 1971.	20	50	15
16-10-6003	Application for license, modification of license or renewal of license for individual mobile stations—each additional mobile unit per application, 1971.	20	30	9
	Rural radio service			
16-20-1002	Application for an initial construction permit or for relocation of facilities—central office.	74	200	120
16-20-1501	Application for modification of construction permit or license—central office.	45	75	
16-20-3002	Application for license for operation of rural subscriber station at temporary fixed locations.	44	30	20
16-20-4002	Application for license or modification of license for individual subscriber stations.	28	25	
16-20-5002	Application for renewal of license for rural subscriber station	21	25	15
16-20-6001	Application for renewal of license for central office station	21	125	75
16-20-7002	Application for an initial construction permit or for relocation of rural subscriber facilities, 1975.	78		75
16-20-8002	Application for other than initial construction permit, modification of construction permit or license for rural subscriber facilities, 1975.	49		45
16-20-9002	Application for other than initial construction permit, modification of construction permit or license for central office, interoffice or relay facilities, 1971.	43	75	45
	Point-to-point microwave radio service			
16-30-1001	Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to existing points of communication or for relocation of facilities.	132	200	120
16-30-2001	Application for license for operation of a station at temporary-fixed locations.	61	150	90
16-30-3001	Application for modification of construction permit or license	56	200	30
16-30-4001	Application for renewal of license	75	125	75
	Local television transmission service			
16-40-1001	Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to an existing station location or for relocation of facilities.	132	200	120
16-40-2001	Application for license for operation of an STL station at temporary-fixed locations.	130	150	90
16-40-3001	Application for license for operation of a mobile television pickup station	61	150	90
16-40-4001	Application for modification of a license	55	100	30
16-40-5001	Application for renewal of license	75	75	75
	International fixed public radiocommunication services—International fixed public system			
16-51-1001	Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.	324	650	500
16-51-2001	Application for change of location of an authorized station	NR	550	330
16-51-4001	Application for modification of license	216	125	75
16-51-5001	Application for renewal of license	434	300	180
	International fixed public radiocommunications—international control station			
16-52-1001	Application for initial construction permit for a new station or an additional transmitter(s) at an authorized station.	NR	500	300
16-52-2001	Application for construction permit for a replacement transmitter(s) at an authorized station.	59	300	180
16-52-3001	Application for change of location of an authorized station	NR	500	300
16-52-4001	Application for modification of license	57	125	75
16-52-5001	Application for renewal of license	57	150	90
	Other radio services			
16-60-1002	International fixed radio communications services. Application for assignment of an authorization or transfer of control.	119	60	35
16-60-1004	Domestic public land mobile radio service only. Application for assignment of an authorization or transfer of control.	120	60	
16-60-2001	All other common carrier radio applications	58	25	15
	Satellite communications services			
16-70-1002	Application for initial construction permit for Earth station	1,254	50,500	Var.
16-70-1102	Application for initial construction permit for a commerical receive-only or transportable Earth station, 1971.	188	Var.	Var.

COMMON CARRIER BUREAU—Continued

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
16-70-1201	Application for initial construction permit for an Earth station to be used solely for development or noncommerical purposes, 1971.	164	150	
16-70-1301	Application for renewal of license for a developmental or noncommercial Earth station, 1971.	64	150	
16-70-1401	Application for modification of construction permit for Earth station	101	2,200	Var.
16-70-1501	Application for authority to operate a transportable Earth station at a fixed site, 1971.	155	360	18
16-70-1601	Application for renewal of license—Earth station	58	500	
16-70-1602	Application for renewal of license for a commercial transmit/receive Earth station, 1971.	126	5,100	3,060
16-70-1603	Application for renewal of license for a commerical receive-only Earth station, 1971.	81	550	330
16-70-1801	Application for initial construction permit or modification of construction permit of license for an auxiliary station (boresight) to an Earth station or for a telemetry, tracking and control station, 1971.	353	Var.	Var.
16-70-1901	Application for renewal of license of an auxiliary station to an Earth station or for a telemetry, tracking, or control station, 1971.	65	250	180
16-70-2001	Application for initial construction permit satellite, 1971	12,902	5,250	3,150
16-70-2102	Application for authority to construct and launch satellites	2,061	100,500	Var.
16-70-2201	Application for assignment of a commercial transmit/receive Earth station or satellite construction permit or license or transfer of control of a licensee or permittee, per Earth station or satellite.	2,364	300	45
16-70-2302	Application for assignment of a commercial receive-only or transportable Earth station construction permit or license or transfer of control of a licensee or permittee, per Earth station, 1971.	107	75	45
16-70-2401	Application for communications common carrier for authorization to own stock in the Communications Satellite Corp.	77	75	45
16-70-2501	Any other application filed under the Communication Satellite Act	65	75	45
	Multipoint distribution service			
16-75-1002	Application for initial construction permit or for modification involving relocation of station or addition or change of frequencies or increase in power, 1975.	1,899		150
16-75-1101	Application for other modification of construction permit or license, 1975	64		30
16-75-1201	Application for renewal of license, 1975	89		75
	Common carrier nonradio applications			
16-80-1001	Sec. 214 applications for construction of landline coaxial cable	700	Var.	Var.
16-80-1102	Sec. 214 applications to extend or supplement facilities by construction of voice cables or installation of carrier equipment on landline wire, cable or radio routes.	307	Var.	Var.
16-80-1105	Sec. 214 applications to extend or supplement facilities by construction of voice cables or installation of carrier equipment on landline wire, cable or radio routes (A.T. & T. blanket).	9,312	Var.	Var.
16-80-1201	Sec. 214 applications to lease facilities from other carriers (except overseas).	2038	Var.	Var.
16-80-1301	Sec. 214 applications for overseas cable construction	45,578	Var.	Var.
16-80-1401	Sec. 214 applications to establish communication channels on overseas cables.	257	Var.	
16-80-1501	Cable landing license	168	200	120
16-80-1602	Sec. 214 application to acquire overseas cable channels	1,217	Var.	
16-80-1712	Sec. 214 application to acquire domestic circuits to interconnect international circuits—circuits outside of the United States.	165	25	15
16-80-1722	Sec. 214 application to acquire domestic circuits to interconnect international circuits—circuits within the United States or territories.	1,189	Var.	Var.
16-80-1801	Sec. 214 applications to install carrier equipment to establish channels of communication at an Earth station, 1971.	456	Var.	Var.
16-80-1901	Sec. 214 applications to establish and operate satellite channels	354	Var.	150
16-80-2002	Sec. 214 application to acquire satellite channels	283	Var.	Var.
16-80-2122	Sec. 214 applications to discontinue, reduce or impair services to the public—telephone companies.	306	100	
16-80-2132	Sec. 214 applications to discontinue, reduce or impair services to the public—telegraph companies.	28	25	15
16-80-2141	Sec. 214 applications to discontinue, reduce or impair services to the public, public coast stations, 1971.	28	25	15
16-80-2147	Sec. 214 application to discontinue, reduce or impair service to the public, all other, 1975.	35		60
16-80-2152	Interlocking directorate applications	88	50	30
16-80-2162	Sec. 221 applications	150	260	30
16-80-2171	Tariff applications to change charges or regulations on less than statutory notice.	44	25	25
16-80-2181	All other common carrier nonradio applications	3,084	25	15
16-80-2501	Sec. 214 application to lease satellite transponder for domestic use (per transponder), 1975.	247		25
16-80-2702	Sec. 214 application to establish or supplement international facilities by installation or acquisition of carrier equipment on overseas cable or radio routes (except satellite) or to acquire such facilities on a capital basis other than ownership, 1975.	1,772		Var.
16-80-2802	Sec. 214 application to lease channels on oversess cable or radio routers (except satellites), 1975.	1,086		Var.
16-80-2926	Sec. 214 application to acquire satellite channels (for international use), 1971.	283	Var.	Var.
	Tariff filings			
16-90-1002	Annual gross revenue of issuing carrier: Under $1 million, 1975	51		50
16-90-2002	Annual gross revenue of issuing carrier: $1 million to $100 million, 1975	153		100
16-90-3002	Annual gross revenue of issuing carrier: $100 million to $1 billion, 1975	196		300
16-90-4002	Annual gross revenue of issuing carrier: $1 billion to $10 billion, 1975	42		500
16-90-5002	Annual gross revenue of issuing carrier: Over $10 billion, 1975	294		700
	Special temporary authority			
16-95-0002	Special temporary authority	58	25	25

SAFETY AND SPECIAL RADIO SERVICES BUREAU

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
	Maritime radio services			
17-11-0001	Interim ship permit including subsequent initial license	10	25	
17-12-0001	Common carrier public coast station—initial license and renewal	42	75	75
17-12-0002	Common carrier public coast station—assignment of license	25	75	75
17-13-0001	Marine radio service—microwave station (new, renewal, assignment)	22	75	20
	Industrial, land transportation and public safety services			
17-21-0001	Operational fixed stations using frequencies above 952 MHz—initial license and renewal.	14	75	20
17-21-0002	Operational fixed stations using frequencies above 952 MHz—assignment of license.	14	75	20
17-22-0001	Industrial land transportation and public safety services microwave station—new, renewal, assignment.	14	75	20
17-23-0001	Stations using frequencies in the 806-947 MHz band and providing service on a commercial basis—per channel, 1975.	NR		200
	Aviation radio service			
17-31-0001	Aviation radio service—microwave stations (new, renewal, assignment)	14	75	20
	Amateur radio service			
17-41-0001	Special call sign (plus other applicable fee)	9	25	25

BROADCAST BUREAU

	Construction permit			
18-10-0002	Application for construction permit for new station or for major changes in existing station—VHF, top 50 markets, nondirectional.	1,624	50,000	77,500
18-10-0004	Application for construction permit for new station or for major changes in existing station—UHF, top 50 markets, nondirectional.	1,485	25,000	25,000
18-10-0006	Application for construction permit for new station or for major changes in existing station—VHF, next 50 markets, nondirectional.	1,624	20,000	31,000
18-10-0008	Application for construction permit for new station or for major changes in existing station—UHF, next 50 markets, nondirectional.	1,624	10,000	10,000
18-10-0010	Application for construction permit for new station or for major changes in existing station—VHF, balance, nondirectional.	1,537	10,000	15,500
18-10-0012	Application for construction permit for new station or for major changes in existing station—UHF, balance, nondirectional.	1,537	5,000	5,000
18-10-0014	Application for construction permit for new station or for major changes in existing station—FM, class A, nondirectional.	752	1,000	1,550
18-10-0016	Application for construction permit for new station or for major changes in existing station—FM, class B and C, nondirectional.	818	2,000	3,100
18-10-0018	Application for construction permit for station or for major changes in existing station—AM, day 50 KW, nondirectional.	881	5,000	7,750
18-10-0020	Application for construction permit for new station or for major changes in existing station—AM, day, 25 KW, nondirectional.	881	4,000	6,200
18-10-0022	Application for construction permit for new station or for major changes in existing station—AM, day, 10 KW, nondirectional.	NR	3,000	4,650
18-10-0024	Application for construction permit for new station for major changes in existing station—AM, day, 5 KW, nondirectional.	674	2,000	3,100
18-10-0026	Application for construction permit for new station or for major changes in existing station—AM, day, 1 KW, nondirectional.	674	1,000	1,550
18-10-0028	Application for construction permit for new station or for major changes in existing station—AM, day, 500 W, nondirectional.	674	500	775
18-10-0030	Application for construction permit for new station or for major changes in existing station—AM, day, 250 W, nondirectional.	674	250	390
18-10-0032	Application for construction permit for new station or for major changes in existing station—AM, class IV, nondirectional.	901	1,000	1,550
18-11-0001	Application for construction permit for new station or for major changes in existing station. For directional antenna in addition to above (VHF/UHF top 50 markets, VHF/UHF next 50 markets, VHF/UHF balance).	250	500	
18-11-0004	Application for construction permit for new station or for major changes in existing station. For directional antenna in addition to above (AM, day, 50 KW, 25 KW, 10 KW, 5 KW, 1 KW, 500 W, 250 W).	250	500	
18-11-0006	Application for construction permit for new station or for major changes in existing station. For directional antenna, AM unlimited (50 KW, 25 KW, 10 KW, 5 KW, 1 KW, 500 W, 250 W).	1,486	500	
	Other applications			
18-21-0001	Applications filed on form 316 (where more than one broadcast station license is involved * * *), AM.	254	250	
	Assignment and transfer sales exchange. Application for assignment of license or transfer of control on form 316 filing—AM 1975.	254		100
18-21-0002	Applications filed on form 316 (where more than one broadcast station license is involved * * *), FM.	254	250	
	Assignments and transfers, sale exchange. Application for assignment of license or transfer of control on form 316 filing—FM, 1975.	254		100
18-21-0003	Applications filed on form 316 (when more than one broadcast station is involved * * *), TV.	254	250	
	Assignments and transfers, sales exchange. Application for assignment of license or transfer of control on form 316, filing—TV, 1975.	254		100
18-22-0001	Application for construction permit to replace expired permit, FCC form 321—AM.	243	500	250
18-22-0002	Application for construction permit to replace expired permit, FCC form 321—FM.	243	500	250
18-22-0003	Application for construction permit to replace expired permit, FCC form 321—TV.	243	500	250

BROADCAST BUREAU—Continued

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
18-22-0004	Application for construction permit to replace expired permit, FCC form 321—auxiliary.	231	50	50
18-23-0001	Application for modification other than major change—AM	521	50	
	Application for modification other than a major change, form 301; application to change antenna transmitter site, or to increase antenna height, or to change antenna pattern—AM, 1975.	521		Var.
	Application for modification other than a major change, form 301; application to change antenna transmitter site, or to increase antenna height, or to change antenna pattern—auxiliary (if AM), 1975.	521		Var.
	Application for modificatiion other than a major change, form 301. All other FCC form 301 applications—AM, 1975.	521		100
18-23-0002	Application for modification other than a major change—FM	252	50	
	Application for modification other than a major change, form 301; application to change antenna transmitter site, or to increase antenna height, or to change antenna pattern—FM, 1975.	252		Var.
	Application for modification other than a major change, form 301; application to change antenna transmitter site, or to increase antenna height, or to change antenna pattern—auxiliary (if FM), 1975.	252		Var.
	Application for modification other than a major change, form 301; all other FCC form 301 applications—FM, 1975.	252		100
18-23-0003	Application for modification other than a major change—TV	739	50	
	Application for modification other than a major change, form 301; application to change antenna transmitter site, or to increase antenna height, or to change antenna pattern—TV, 1975.	739		Var.
	Application for modification other than a major change, form 301; all other FCC form 301 applications—TV, 1975.	739		100
18-25-0002	Application for change of call sign for broadcast station—AM	245	100	200
18-25-0004	Application for change of call sign for broadcast station—FM	245	100	200
18-25-0006	Application for change of call sign for broadcast station—TV	250	100	200
18-26-0001	All other applications in the broadcast service—AM	305	50	100
	Application for authorization in auxiliary broadcast services, FCC form 313, for modification of construction permit or license in auxiliary broadcast services (if AM), 1975.	305		50
	Application for authorization in auxiliary broadcast services, form 313; application for new remote pickup mobile station (if AM), 1975.	305		100
	Application for authorization in auxiliary broadcast services, form 313; application for new construction permit for intercity relay or for studio transmitter link or for remote pickup base station (if AM), 1975.	305		250
	Application for construction permit or license of auxiliary or alternate main transmitter (if AM), 1975.	305		50
	Application for construction permit or license of auxiliary or alternate main transmitter—auxiliary (if AM), 1975.	305		50
	Application for extension on FCC form 701—AM, 1975	305		100
	Application for extension on FCC form 701—auxiliary (if AM), 1975	305		50
	International broadcasting: Construction permits for new stations and major changes in existing stations (if AM), 1975.	305		700
	International broadcasting construction. Grant fee for application for seasonal schedule (if AM), 1975.	305		Var.
18-26-0002	All other applications in the broadcast services—FM	305	50	100
	Application for authorization in auxiliary broadcast services, FCC form 313, for modification of construction permit or license in auxiliary broadcast services (if FM), 1975.	305		50
	Application for authorization in auxiliary broadcast services, form 313; application for new remote pickup mobile station (if FM), 1975.	305		100
	Applications for authorization in auxiliary broadcast services, form 313; application for new station construction permit for intercity relay or for studio transmitter link or for remote pickup base station (if FM), 1975.	305		250
	Application for construction permit or license of auxiliary or alternate main transmitter—FM, 1975.	305		50
	Application for extension on FCC form 701—AM, 1975	305		100
	Application for extension on FCC form 701—auxiliary (if FM), 1975	305		50
	International broadcasting: Construction permits for new stations and major changes in existing stations (if FM), 1975.	305		700
	International broadcasting construction. Grant fee for application for seasonal schedule (if FM), 1975.	305		Var.
18-26-0003	All other applications in the broadcast service—TV	347	50	100
	Application for authorization in auxiliary broadcast services, FCC form 313, for modification of construction permit or license in auxiliary broadcast services (if TV), 1975.	347		50
	Application for authorization in auxiliary broadcast services, form 313; application for new remote pickup mobile station (if TV), 1975.	347		100
	Application for authorization in auxiliary broadcast services, form 313; application for new station construction permit for intercity relay or for studio transmitter link or for remote pickup base station (if TV).	347		250
	Application for construction permit or license of auxiliary or alternate main transmitter—TV, 1975.	347		50
	Application for construction permit or license of auxiliary or alternate main transmitter—auxiliary (if TV), 1975.	347		50
	Application for extension on FCC form 701—TV, 1975	347		100
	Application for extension on FCC form 701—auxiliary (if TV), 1975	347		50
	International broadcasting: Construction permits for new stations and major changes in existing stations (if TV), 1975.	347		700
	International broadcasting construction. Grant fee for application for seasonal schedule (if TV), 1975.	347		Var.
18-26-0004	All other applications in the broadcast service—experimental and developmental applications.	1,390	50	100
	Subscription television			
18-40-0001	Application for subscription television authorizations—application filing fee.	1,390	1,000	700

BROADCAST BUREAU—Continued

Fee category code No.	Fee category (1970 except as noted)	Cost	1970 Fee	1975 Fee
	Assignments and transfers			
18-51-0002	Application for assignment of license or transfer of control exclusive of FCC, form 316 applications—filing, assignment, transfer, grant.	498	Var	Var.
	Application for assignment of license or transfer of control exclusive of FCC, form 316 applications—filing.	498		Var.
	Assignment and transfer grant fees on forms 314 and 315; for AM stations and joint assignment or transfer of AM/FM stations, with gross revenue of $400,000 or less, 1975.	498		Var.
	Assignment and transfer grant fees on forms 314 and 315; for AM stations and joint assignment or transfer of AM-FM stations, with gross revenues greater than $400,000, 1975.	498		Var.
	Assignment and transfer grant fees in forms 314 and 315; for all FM stations, 1975.	498		Var.
	Assignment and transfer, grant fees on forms 314 and 315; for television stations with gross revenue of $800,000 or less, 1975.	498		Var.
	Assignment and transfer grant fees on forms 314 and 315; for television stations with gross revenue greater than $800,000.	498		Var.
	Assignment and transfer grant fees on forms 314 and 315; in all other cases and/or when gross revenue is indeterminable.	498		Var.
	Special temporary authority			
18-60-0001	Special temporary authority (STA)	233	25	25
	Annual license fee			
18-70-0002	Annual license fees—for AM and FM stations	323	Var	Var.
18-70-0004	Annual license fees—for television broadcast stations	317	Var	Var.

CABLE TELEVISION BUREAU

	Cable television relay service			
20-10-0001	Cable television relay service (CARS)—construction permit	481	50	20
	Petitions			
20-20-0001	Petition for special relief sec. 76.7, 1972	1,513	25	
20-20-0002	Petition for special relief (other than that specified below) pursuant to 74.1109.	976	25	
20-20-0003	Petition for experimental operations (par. 51, 12/68 NPRM and notice of inquiry docket 18397 * * *.).	1,657	25	
20-20-0004	Petition for waiver of hearings with regard to carriage of distant signals within grade A contour of TV broadcast in top 100 market. Per proposed commercial (a) UHF station, or (b) network affiliated UHF station, distant signal.	978	25	
	Certificates of compliance			
20-30-0001	Certificates of compliance—routine, 76.11, 1972	316		
20-30-0002	Certificate of compliance—nonroutine, 76.11, 1972	817	35	
	Special temporary authority			
20-50-0001	Petition for special temporary authority	339	25	25

[1] 75 pct (see notations).

Notations: 1970=Aug. 1, 1970, to Feb. 28, 1975. 1975=Mar. 1, 1975 to Dec. 31, 1976. NR=No applications received. Var.=Variable fee, 75 pct=75 pct of file and grant fee for that particular equipment.

ATTACHMENT B

UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission has started a two-phased program to refund a portion of the fees it collected between August 1, 1970, and December 31, 1976. This first phase is limited to those fees which were more than $20. Partial refunds of fees of $20 or less, including all citizen band (CB) fees, will be handled in the second phase.

Please read the instructions in this booklet to determine if you are eligible to receive a refund. If you believe that you meet the criteria for filing a claim, then complete the claim form, sign where indicated, and mail the completed claim form and supporting evidence to this address: Federal Communications Commission, Over $20 Fee Refund Program, P.O. Box 12345, Some City, State ZIP Code.

We have tried to keep the claim form and instructions as simple as possible to cut down on needless paperwork. The information we are requesting is the minimum amount needed to process your claim while satisfying the legal requirements for a Federal system of this type.

If you have specific questions about the fee refund program you can call this toll-free number: 800-123-4567. (In the Washington, D.C., metropolitan area the number is 555-1212.)

Again, please read the instructions carefully. If your claim is accurate and complete, we can process it promptly and you will receive the refund to which you are entitled.

Thank you for your cooperation.

NOTE.—The proposed form included herein, is subject to General Accounting Office (GAO) clearance, and the public is invited to comment, particularly in terms of clarity of the data elements, instructions, format, and answering space.

GAO APPROVED OTHER DATA

FEDERAL COMMUNICATIONS COMMISSION CLAIM FORM INSTRUCTIONS

NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT OF 1974

The Communications Act of 1934, as amended, and the Budget and Accounting Act of 1921, as amended, authorize the FCC to request the information on this claim form. The purpose of this information is to determine your eligibility for a refund of fees paid, as well as the amount of your refund. The information will be used by FCC staff to determine the accuracy, completeness, and correctness of your claim. No refund can be granted unless all information requested is provided, and the form is signed and dated.

Listings of amounts paid to claimants are a matter of public record and will be made available by the Commission. If you file for and receive a refund, then your name will appear on such a public listing.

NOTICE TO ALL CLAIMANTS RECEIVING REFUNDS OF $5,000 OR MORE

The Internal Revenue Service has requested that the FCC give it a listing of all claimants who received refunds of $5,000 or more. The FCC will comply with this request.

GENERAL INFORMATION

Please read this section plus the specific instructions and the tables in this booklet before you start to fill out the claim form. You may find that you can file for refunds you did not think were included, or you may find that all or some of the fees you paid are not eligible for refunds because the amount you paid was less than the FCC's cost to process.

Use a typewriter or print clearly, except for your signature.

● What is the purpose of FCC form No. 199?

This form, when completed and signed, represents your claim against the U.S. Government. When you submit this form, you are stating that the Government owes you a portion of the fee(s) you paid to the Federal Communications Commission between August 1, 1970, and December 31, 1976, under the fee schedules in effect during that period.

● Who should file for a refund?

You should file for a refund if:

1. You (as an individual or an organization) paid a fee of $20.01 or more to the FCC between August 1, 1970 and December 31, 1976; *and*

2. The fee you paid was more than it cost the FCC to process your filing, applications, renewal, etc., as shown in the tables at the back of this booklet.

● Must the form be filed by the claimant?

The claim form must be signed by the claimant—that is, the person or organization entitled to the refund. The exceptions to this requirement are:

1. The person who would be eligible to receive the refund is dead; or

2. The organization which would be eligible to receive the refund is either bankrupt, in receivership, or otherwise under the protection of a court; or

3. The person who would be eligible to receive the refund has been judged to be legally incompetent.

In these three cases, claims may be submitted by persons who can demonstrate a power of attorney or other legal instrument which gives them the authority to act in behalf of the claimant.

● Are all fees eligible for refunds?

No. During the period when the FCC collected fees under the 1970 and 1975 fee schedules, there were more than 250 diffeent reasons (or "fee types") for which fees were collected. More than half of these fee types are *not* eligible for refunds because the cost to process was more than the amount collected.

You should refer to table 2 to find the description of the fee(s) you paid to determine if a claim should be filed.

● What information is required on the claim form?

The claim form has three parts. Part I asks for information that uniquely identifies each claimant, tells the FCC to whom the refund check should be issued, where it should be sent, as well as information that permits the Commission to control the flow of claims and to check for duplicate submissions.

Part II of the claim form asks for information about each of the fees you paid which are eligible for refunds. The claim form is designed so that you can file up to four claims on a single piece of paper. If you need more copies of part II, continuation sheets are provided in this booklet. (See the next question/answer for more information on filing a combined or consolidated claim.)

Part III of the form contains two paragraphs and space for your signature indicating that you have read the paragraphs and understand their meaning and significance. When you sign the form you are stating that (1) if the Commission pays you the amount of money you claimed, you waive all rights to seek additional money from the Commission for the claim involved, and (2) that the information you supply on the claim form and its attachments is true, accurate and complete. NOTE.—This is merely a paraphrasing of the text in part III. You should read the full text before you sign.

● Should I file a separate claim form for each fee paid?

Not necessarily. FCC form No. is a multipurpose form. If you are filing a single claim, you need only complete the front side of the form (parts I, II, and III).

If you are filing for more than one refund, you can do so by completing part I of the form for all of your claims and then using as many part II entries as you need so long as the following conditions are met:

1. The claimant remains the same for all the claims; *and*

2. Lines H through L on part I of the claim form remain constant.

In other words, if all of your claims will be processed by the same FCC bureau and service (lines H and I), and your filing status, employer identification number (or its equivalent) and call sign (or its equivalent) remain the same (lines J, K, and L, respectively), then you can file a consolidated claim. If there is a change in any of these fields, you must file a separate claim form.

NOTE.—Please refer to the specific instructions for part I for the detailed definitions used in the preceding paragraph.

● Is supporting evidence required?

Not necessarily. The nature and extent of supporting evidence depends on a number of factors.

If the amount of your claim (*not* the fee you paid) is $100 or less, then you do not have to submit additional evidence. The only excetion is if the FCC *denied* your application. You should attach a copy of the Commission's letter or notice of denial.

If the amount of your claim is $101 or more, then you must supply evidence indicating that you paid the fee which is the subject of this claim. Examples of the kind of evidence needed to substantiate your claim would be copies of:

1. Canceled checks (front and back).

2. FCC Fee Section receipts.

3. Licenses, grants, or other authorizing documents issued by the Commission. (Send only that portion containing fee-related information.)

If your claim involves a refund for fees paid at the time of license transfer, you must include that portion of the transfer agreement indicating that you are to receive any refunds issued by the Commission. If no such language exists refunds issued by the Commission. If no such language exists in the transfer agreement, the Commission will accept a notarized letter signed by both buyer and seller which incorporates any new agreements reached between them regarding the refund of fees paid.

● How will the FCC use the information on the claim form?

The FCC will compare the information you submit on your claim form with information in FCC files to verify your claim.

● What happens if my claim is denied?

If your claim is denied or if the amount you requested is reduced, the Commission will notify you of its decision and the reasons why. The Commission will also provide information on how you can appeal the decision.

● When will I get my refund check?

If your claim is approved for payment, you will get your refund check within ninety (90) days of the date when we receive your claim.

● Is there a time limit on filing claims?

You should file your claim before December 31, 1979. If you file after that date, you must file your claim with the General Accounting Office, not with the FCC. This procedure will likely delay the timely processing of your claim.

● Can I file a claim if my records are lost?

You should complete as much of the claim form as possible.. You should also attach an affidavit stating why or how the information you need to file a complete claim is not available. The Commission will undertake a good faith effort to locate the particulars of your claim in its files. You will be notified by the Commission of the result of its investigation.

● Where can I get more claim forms?

Claim forms are available by writing to the FCC, or at all FCC field offices, at all Federal Government information centers, an at local post offices, where they may be picked up.

Claim forms are available by writing to the FCC, or at all FCC field offices, at all Federal Government information centers, and at local post offices, where they may be picked up.

You can also make copies of the form using any good quality office copier or reproducing device.

● How can I get more information?

The FCC has established a toll-free number to answer any questions you have about the fee refund program. That number is 800-123-4567. In the Washington, D.C., metropolitan area the number is 123-4567.

● Where should I send my claim?

You should send one copy of your claim (and any supporting evidence that is required) to: Federal Communications Commission, Over $20 Fee Refund Program, P.O. Box , Some City, State ZIP code.

Specific Instructions

PART I.—CLAIMANT INFORMATION

The information requested on this part of the claim form is used by the FCC for several purposes. Lines A through E are used to identify uniquely each claimant. Lines F and G gives us the name and phone number of the person to contact if we need additional information about the claim. Lines H and I indicate which organizational unit in the FCC should process the claim. Lines J, K, and L give us detailed information with which to identify a claimant and to control claim forms within the system. Lines M and N permit us to relate this claim to other claims you may be filing.

NOTE.—You must file a separate claim form whenever a change occurs in any of the following lines: H, I, J, K, or L. If these lines are constant, you can file all of your claims by completing part I and then numbering consecutively the claims on the reverse side of this form and on the continuation pages provided at the end of this booklet.

Line A (Claimant name.)—Enter the name of the individual or organization on whose behalf the claim is being filed. All refund checks will be made payable to the claimant.

If the claim is made on behalf of a person who has died, a bankrupt organization, or a person who is legally incompetent, then the person filing the cliam should attach a power of attorney or other legal instrument demonstrating his/her authority to file this claim.

Please limit this entry to 35 positions, including spaces and punctuation.

Line B (Mailing name.)—Enter the name of the person or organization to whom the refund check should be sent. If this name is the same as that of the claimant, leave blank (35 positions.)

Line C (Address line 1)—If applicable, enter the building name, suite, or room number of the address where the refund check will be mailed. (30 positions.)

Line D (Address line 2)—Enter the street address. (30 positions.)

Line E (City, State, and ZIP code)—Enter the city (23 positions), State (2), and ZIP Code (5) for check mailing. See table 1 for State abbreviations to be used.

If the refund check is to be mailed outside the United States, then ignore the state ZIP code requirements.

Line F (Person to contact)—Enter the name of the person we can contact to get additional information about this claim, or to whom we should address our questions.

Line G (Telephone number)—Enter the area code and telephone number of the person given in line F.

NOTE.—Please refer to table 2 to help you complete the next two entries.

Line H (Bureau code)—This field indicates the FCC bureau which will process your claim. To determine which bureau code to use, refer to table 2. This table defines the reasons fees were paid and the bureaus to which they were due. When you have identified the fee you paid, go to column 1 of the table to get the bureau code. (2 positions.)

Line I (Service code)—Enter the service code based on column 2 of table 2 for the fee you paid.

Line J (Filing status)—The filing status code should be completed using the following definitions:

If the claimant does not have an EIN, then enter "1."

If the claimant has an employer identification number (EIN) assigned by the Internal Revenue Service, then enter "2."

If this claim is being filed on behalf of a person who has died, a bankrupt organization, or a legally incompetent person, then enter "3."

Line K (Employer identification number, or equivalent)—If you entered "2" on line J, then enter your EIN. If you have more than one EIN, use the one under which you file your monthly statement of FICA and Federal withholding taxes. Enter this nine digit number without spaces or dashes.

If you entered a "1" on line J, then enter the first four letters of your last name as it appears on line A.

If you entered a "3" on line J, then enter the first four letters of the claimant's last name as it appears on line A.

Line L (Current call sign, or equivalent)—If you have a current call sign, then enter it on this line. (8 positions maximum; ignore dashes and spaces.)

If you do not have a current call sign, then follow these instructions:

If you are filing a claim with the Office of the Chief Engineer, then enter the first eight (8) positions of the equipment model number which is the subject of this claim. (See also the instructions for part II, line 4.)

If you are filing a claim with the Common Carrier Bureau, then enter the first eight (8) positions of the FCC file number which is the subject of this claim. (See also the instructions for part II, line 1.)

If you are filing a claim with the Safety and Special Radio Services Bureau, then enter your prior call sign—the one which is the subject of this claim. If you do not remember either call sign, then enter the first four letters of the vessel name which had the call sign.

Line M (Number of claims)—Enter the number of claims you are submitting with this form.

Line N (Total amount claimed)—Enter the total amount you are claiming with this form. If you are filing more than one part I because of changes in Lines H through L, enter only the total associated with *this* form.

PART II.—DETAILED CLAIM INFORMATION

The information requested on this part of the form will be used by the FCC to verify your claim. This means that the information you provide on the claim form will be compared with information in FCC files. Based on this comparison, the bureau which processes your claim will make a recommendation on the disposition of your claim. The bureau can recommend that the Commission: (1) Pay your claim in the amount you requested, or (2) pay the claim but for less than you requested because of discrepancies between your claim and our records, or (3) deny payment because your claim is not eligible for a refund.

If the Commission decides to pay you less than you requested or if the Commission denies your claim entirely, then you will receive a detailed explanation of the Commission's action. You will also receive instructions on how you can appeal the Commission's action.

NOTE.—Under the laws governing Federal claims reimbursement systems, the Commission cannot issue refunds for more than the amount of the claim even if you are entitled to such an amount. If the Commission believes that you are entitled to more than you claimed, it will return your claim indicating that you may wish to resubmit your claim.

Line 1 (File number)—This entry applies only to those claims submitted to the Common Carrier Bureau under one or more of the following services and fee type codes:

Service	Fee type codes
Domestic public land mobile radio	111-115
Rural radio	117-121
Point-to-point microwave radio	123-126
Satellite communications	141-154
Nonradio applications	155-181

The file number can be found on the authorization and contains a maximum of 23 positions.

Line 2 (Filing date)—If you entered a file number in line 1, then enter the date when you filed your application. Enter the date as a numeric in the form of month/day/year. For example, October 29, 1970, is entered as 10-29-70.

Line 3 (Transmittal number)—This entry applies only to those claims submitted to the Common Carrier Bureau for refunding fees associated with tariff filings (service code 059). The transmittal number can be found on the cover page of the tariff application and has no more than five (5) positions.

Line 4 (Class of equipment)—This entry applies only to those claims submitted to the Office of the Chief Engineer. Enter the class of equipment in the same way you did when you paid the original fee for a filing/grant of equipment authorization.

The maximum size of this entry is 15 positions.

Line 5 (Model number)—This entry applies only to those claims submitted to the Office of the Chief Engineer.

Enter the complete model number for the piece of equipment which is the subject of this claim. Enter the model number in the same format as that used when you originally sought certification, type approval, or type acceptance.

The maximum size of this entry is 17 positions.

Line 6 (FCC decision code)—Enter the FCC's decision regarding this part of your original (or amended) filing/application using the following codes:

Enter "0" if the FCC did not have to approve or deny your application, e.g., annual license renewal fees.

Enter "1" if the FCC approved your application or grant request.

Enter "2" if the FCC denied your application or request.

NOTE.—You must attach a copy of FCC notice of denial to your claim form.

Enter "3" if you withdrew your application or grant request before the FCC acted on it.

Line 7 (Vessel name)—This entry applies only to those claims submitted to the Safety and Special Radio Services Bureau for issuing a ship license with an interim authorization (type code *106*).

Enter the vessel name under which this fee was paid.

Line 8 (Prior call sign)—Enter the call sign under which (or for which) you paid the fee that is the subject of this claim.

If you have had more than one call sign change, then each change should be the subject of a claim. Each claim would therefore list the call sign you had before the new one was granted.

If your call sign has not changed, enter your current call sign (see part I, line L).

Line 9 (FCC validation number)—The FCC validation number is that number assigned by the Commission when you paid your fee. This is a 17 position number and will be found in one or more of the following places:

Fee cage receipt, if you paid your fee in person;

Reverse side of your canceled check to the FCC;

Bottom of the first page of an authorizing document issued by the FCC, such as a tariff filing, a temporary authorization, or any other Commission notice.

Line 10 (Attachment numbers)—If you are submitting evidence and supporting documentation with your claim as required, number all the attachments consecutively. Indicate here which of the attachments is (are) associated with this claim.

NOTE.—Make sure your supporting documents are attached to the proper numbered claim.

Line 11 (Claim number)—Claim numbers 1 through 4 are prenumbered on the form. If you need additional space, use the continuation sheet provided and number the claims consecutively beginning with 00005.

Line 12 (Date fee paid)—Enter the date when you paid the fee which is the subject of this claim. Enter the date as numerics in the format of month/day/year. For example, June 9, 1975, is entered as 06-09-75.

Line 13 (Amount paid)—Enter the amount you paid for this fee type code. In some cases you may have paid a single amount which covered more than one fee. You should refer to table 2 to determine how much of the total fee you paid belongs to this particular claim.

Here are some of the more common instances where more than one fee was paid by a single check:

Satellite communication systems;

Amateur licenses with special call signs;

Construction permit grants and directional antenna.

Line 14 (Refund claimed)—Using table 2, enter the amount you are claiming for a refund of this particular fee. In most cases, the amount of your refund is the difference between what you paid and the cost to the Commission to process your application or filing.

If the fee you paid was based on variables—such as the number of pages in a tariff filing, the number of channel miles in a communications system, or a percent of consideration for a commercial license transfer—Please submit an attachment indicating: (1) How you computed the original fee you paid, and (2) how you computed the amount of your claim.

All claims should be entered as dollars only.

Line 15 (Fee type code)—Using table 2, column 2, enter the fee type code that describes the fee you paid.

Line 16 (FCC decision date)—Enter here the date on which the FCC made its decision on your filing or application. This date will be found on one or more of the following: License; other authorizing document; letter or notice of denial.

Enter the date as month/day/year, using numeric codes. For example, July 12, 1971, is entered as 07-12-71.

NOTE.—Lines 17-20 are reserved for use by the FCC.

PART III.—WAIVER AND CERTIFICATION

This part of the claim form contains two paragraphs which you should read carefully. Both paragraphs, the *waiver* and the *certification*, apply to all claims submitted with the form.

NOTE.—You must sign part III (including your title and the date) before the FCC can process your claim. If the FCC receives an unsigned claim, we will return it to the name and address shown in part I (lines A-E).

PROPOSED FORM - SAMPLE

GAO APPROVED
OTHER DATA

FEDERAL COMMUNICATIONS COMMISSION
Fee Refund Program
Post Office Box 0000000
Somecity, State Name 00000

● A.	CLAIMANT NAME (35)	● H.	BUREAU CODE (2)
● B.	MAILING NAME	● I	SERVICE CODE (4)
● C.	ADDRESS LINE 1 (30)	● J	FILING STATUS (1)
● D.	ADDRESS LINE 2 (30)	● K.	EMPLOYER IDENT. No. (9)
● E.	CITY, STATE AND ZIP (30)	● L	CURRENT CALL SIGN (6)
F.	PERSON TO CONTACT	M.	NUMBER OF CLAIMS (5)
G.	TELEPHONE NUMBER ( )	N.	TOTAL AMOUNT CLAIMED (10)

1.	FILE NUMBER	● 11.	CLAIM NUMBER (5) 00001
2.	FILING DATE	● 12.	DATE FEE PAID (6)
3.	TRANSMITTAL NUMBER	● 13.	AMOUNT PAID (9)
4.	CLASS OF EQUIPMENT	● 14.	REFUND CLAIMED (9)
5.	MODEL NUMBER	● 15.	FEE TYPE CODE (4)
6.	FCC DECISION	● 16.	FCC DECISION DATE (6)
7.	VESSEL NAME	17.	
8.	PRIOR CALL SIGN	18.	
9.	VALIDATION NUMBER	● 19.	TRANSACTION CODE (3)
10.	ATTACHMENT NUMBER(S)	● 20.	TRANSACTION DATE (6)

WAIVER

IF I AM PAID THE AMOUNT OF REFUND I HAVE CLAIMED ON THIS FORM, I VOLUNTARILY AGREE TO ACCEPT THAT AMOUNT AS FULL SATISFACTION OF ANY CLAIM THAT I MAY HAVE AGAINST THE UNITED STATES FOR REFUND OF THE FEES COVERED BY THIS CLAIM. I ALSO VOLUNTARILY AGREE TO WAIVE AND ABANDON ANY RIGHTS THAT I MAY HAVE NOW OR MAY ACQUIRE IN THE FUTURE TO REFUND OF ANY ADDITIONAL AMOUNTS FOR THE FEES INVOLVED IN THIS CLAIM.

CERTIFICATION

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS CLAIM, INCLUDING ACCOMPANYING DOCUMENTS AND STATEMENTS, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT, AND COMPLETE. I UNDERSTAND THAT IF I INTENTIONALLY MAKE FALSE STATEMENTS IN THIS CLAIM, I MAY BE PUNISHED BY AS MUCH AS FIVE YEARS IN JAIL AND $10,000 FINE. (TITLE 18, UNITED STATES CODE SECTION 1001.)

(SIGNATURE) (TITLE) (DATE)

FOR FCC USE ONLY

DATE/TIME STAMP
CONTROL NUMBER
FCC FORM NUMBER
OTHER DATA

1.	FILE NUMBER	● 11.	CLAIM NUMBER (5)	00002
2.	FILING DATE	● 12.	DATE FEE PAID (6)	
3.	TRANSMITTAL NUMBER	● 13.	AMOUNT PAID ($)	
4.	CLASS OF EQUIPMENT	● 14.	REFUND CLAIMED ($)	
5.	MODEL NUMBER	● 15.	FEE TYPE CODE (4)	
6.	FCC DECISION	● 16.	FCC DECISION DATE (6)	
7.	VESSEL NAME	17.		
8.	PRIOR CALL SIGN	18.		
9.	VALIDATION NUMBER	● 19.	TRANSACTION CODE (3)	
10.	ATTACHMENT NUMBER(S)	● 20.	TRANSACTION DATE (6)	

1.	FILE NUMBER	● 11.	CLAIM NUMBER (5)	00003
2.	FILING DATE	● 12.	DATE FEE PAID (6)	
3.	TRANSMITTAL NUMBER	● 13.	AMOUNT PAID ($)	
4.	CLASS OF EQUIPMENT	● 14.	REFUND CLAIMED ($)	
5.	MODEL NUMBER	● 15.	FEE TYPE CODE (4)	
6.	FCC DECISION	● 16.	FCC DECISION DATE (6)	
7.	VESSEL NAME	17.		
8.	PRIOR CALL SIGN	18.		
9.	VALIDATION NUMBER	● 19.	TRANSACTION CODE (3)	
10.	ATTACHMENT NUMBER(S)	● 20.	TRANSACTION DATE (6)	

1.	FILE NUMBER	● 11.	CLAIM NUMBER (5)	00004
2.	FILING DATE	● 12.	DATE FEE PAID (6)	
3.	TRANSMITTAL NUMBER	● 13.	AMOUNT PAID ($)	
4.	CLASS OF EQUIPMENT	● 14.	REFUND CLAIMED ($)	
5.	MODEL NUMBER	● 15.	FEE TYPE CODE (4)	
6.	FCC DECISION	● 16.	FCC DECISION DATE (6)	
7.	VESSEL NAME	17.		
8.	PRIOR CALL SIGN	18.		
9.	VALIDATION NUMBER	● 19.	TRANSACTION CODE (3)	
10.	ATTACHMENT NUMBER(S)	● 20.	TRANSACTION DATE (6)	

TABLE 1.—*Abbreviations of States and Territories*

AL Alabama
AK Alaska
AZ Arizona
AR Arkansas
CA California
CO Colorado
CT Connecticut
DE Delaware
DC District of Columbia
FL Florida
GA Georgia
HI Hawaii
ID Idaho
IL Illinois
IN Indiana
IA Iowa
KS Kansas
KY Kentucky
LA Louisiana
ME Maine
MD Maryland
MA Massachusetts
MI Michigan
MN Minnesota
MS Mississippi
MO Missouri
MT Montana
NE Nebraska
NV Nevada
NH New Hampshire
NJ New Jersey
NM New Mexico
NY New York
NC North Carolina
ND North Dakota
OH Ohio
OK Oklahoma
OR Oregon
PA Pennsylvania
RI Rhode Island
SC South Carolina
SD South Dakota
TN Tennessee
TX Texas
UT Utah
VT Vermont
VA Virginia
WA Washington
WV West Virginia
WI Wisconsin
WY Wyoming
SA American Samoa
CZ Canal Zone
GU Guam
MQ Midway Island
VI Virgin Islands
WQ Wake Island
TT Trust Territories of the Pacific
PR Puerto Rico
NQ Northern Mariana Islands

TABLE 2. *FCC Bureau and Service Codes (will be part of Table 2)*

13 Office of the Chief Engineer
- 01 Certification
- 02 Type Acceptance
- 03 Type Approval
- 04 Advance Approval of Subscription TV System

16 Common Carrier Bureau
- 10 Domestic Public Land Mobile Radio
- 11 Rural Radio
- 12 Offshore Systems
- 13 Individual Mobile Systems
- 14 Point-to-point Microwave Radio
- 15 Local Television Transmission
- 16 Multipoint Distribution
- 17 International Fixed Public Radio
- 18 Domestic Satellite Communications
- 19 International Satellite Communications
- 20 Tariff Filings
- 21 Nonradio Applications

17 Safety and Special Radio Services Bureau
- 30 Marine
- 31 Aviation
- 32 Private Operational Fixed Microwave
- 33 Amateur

18 Broadcast Bureau
- 40 International
- 41 AM
- 42 FM
- 43 TV
- 44 Foreign Program
- 45 Experimental TV
- 46 Developmental
- 47 Remote Pickup
- 48 Low Power
- 49 TV Inter-city Relay
- 50 Aural STL
- 51 TV Pickup
- 52 TV STL
- 53 Aural Inter-city Relay

20 Cable Television Bureau

TABLE 2

FCC BUREAU NAME AND CODE	SERVICE NAME AND CODE	NEW FEE TYPE CODE	NARRATIVE DESCRIPTION OF FEE TYPE CODE	FOR 1970-1974 FEE SCHEDULE: OLD FEE TYPE CODE	FEE YOU PAID OR BASIS FOR FEE*	FCC COST TO PROCESS	REFUND AMOUNT IF ANY	FOR 1975 FEE SCHEDULE: OLD FEE TYPE CODE	FEE YOU PAID OR BASIS FOR FEE*	FCC COST TO PROCESS	REFUND AMOUNT IF ANY
OFFICE OF THE CHIEF ENGINEER CODE 13	CERTIFICATION CODE 10	0010	APPLICATION FOR CERTIFICATION OF EACH RECEIVER MODEL-TELEVISION RECEIVERS								
			FILING FEE	077	10.	18	-0-				
			*GRANT FEE	078	50.	18.	32				
			APPLICATION FEE ONLY					077	250.	18.	232.
Common CARRIER BUREAU CODE 16	RURAL RADIO SERVICE CODE 11	1002	APPLICATION FOR AN INITIAL CONSTRUCTION PERMIT OR FOR RELOCATION OF FACILITIES								
			FILING FEE	117	100	59.	41.				
			*GRANT FEE	118	200.	59	141.				
			APPLICATION FEE ONLY					125	120.	59.	61.
SAFETY AND SPECIAL RADIO SERVICES BUREAU CODE 17	MARITIME RADIO SERVICES CODE 30	0001	COMMON CARRIER PUBLIC COAST STATION-INITIAL LICENSE AND RENEWAL.	106	75.	40.	35.	106	75.	40	35
BROADCAST BUREAU CODE 18	TV. CODE 43	0004	APPLICATION FOR CONSTRUCTION PERMIT FOR NEW STATION OR FOR MAJOR CHANGES IN EXISTING STATION - UHF - TOP 50 MARKETS								
			FILING FEE	003	2500.	1114.	1386.				
			*GRANT FEE	004	25,000	1114.	23,886.				
			FILING FEE					001	2500.	1114.	1386.
			*GRANT FEE					002	25000.	1114.	23886.

‡‡ EXPLANATION OF COMPUTATION FOR VARIABLE FEE TYPES.
*GRANT FEE INCLUDES FILING FEE

ATTACHMENT C

Phase I of the FCC fee refund program is intended to deal with all fees greater than $20 collected between August 1, 1970, and January 1, 1977. This attachment defines the types of fees that come within this "over-$20" category.

WHAT IS MEANT BY THE PHRASE "OVER-$20"?

Over-$20 fees consist of five classes or groups of fees. Taken together, these fee groups make up the universe of potential claims.

Definitions are given here and examples are provided in the following section.

Fee group No. 1 consists of all individual fee types which were more than $20 under a published fee schedule.

Fee group No. 2 includes all instances where the sum of the filing and grant fees for a single application was more than $20, even if one or both fees were $20 or less.

Fee group No. 3 includes all filings which contained more than one fee type, even if one or all fees were $20 or less.

Fee group No. 4 contains all filings in which the fee paid was based on a variable, rather than being a constant fixed fee for all applicants for a particular service.

Fee group No. 5 covers all fees which were imposed as a result of amending an application/filing in any of the other four fees groups.

NOTE.—These definitions are not mutually exclusive; that is, a single filing or application could fall in more than one fee group. The crucial point is that any filing or application which cannot meet at least one definition is not eligible for the over-$20 fee refund program.

Individual fees of more than $20

The first fee group, consisting of individual fees of more than $20 under a published fee schedule, is self-explanatory. Examples of fee types that become eligible through this definition are:

All Broadcast Bureau fees;

All grant fees associated with equipment type approval in the Office of the Chief Engineer;

All applications for microwave stations (Safety and Special Radio Services Bureau);

All application fees for construction of a base station for a domestic land mobile radio station (Common Carrier Bureau).

Sum of filing and grant fees more than $20

The second fee group, those in which the sum of filing and grant fees was more than $20 for a single application, will not cover many cases. It is included because the Commission's cost data cannot always distinguish between these fee types. Therefore, the Commission has decided to include in the over-$20 category those cases in which the potential fee was more than $20 when composed of a filing and grant fee.

This "threshhold" definition provides a ready example of fees which are excluded from the over-$20 category. Under the 1970 schedule, the OCE collected a $5 filing fee and a $15 fee grant fee for a "request for modification of a prototype certified equipment operating under part 18 with no change in model number." Because the sum of filing and grant fees is less than $20.01, these fees are ineligible.

One the other hand, if the request to the OCE was for modification of a certified receiver with no change in model number, the following fees are included in the over-$20 system:

Type of equipment	Filing fee	Grant fee	Total
Television receivers	$10	$30	$40
FM receivers	5	20	25
All others	5	20	25

Another example of fees to be included because of this definition comes from the Common Carrier Bureau. That Bureau required a filing fee of $10 for an application to renew a license for a dispatch or control station. The grant fee was $50 (1970 fee schedule).

Filings which contain more than one fee type

The third group of fees (those consisting of a single filing containing more than one fee type) is designed to cover "system" filings. This class of potentially eligible fees recognizes that there were many instances when: (1) A single filing or application contained more than one fee type, (2) that the different fee types in the filing are technically or administratively inseparable, and (3) payment was made with a single check. That is, the applicant would not seek Commission approval for only part of a system; or the Commission's own rules precluded an applicant from filing for only one element/authorization without payment of a fee for another element or authorization.

One important example comes quickly to mind: Some communication circuits are made up of diverse elements, e.g., single system could include land lines, satellite facilities, and marine cables. No one component makes much sense standing on its own.

Variable-based fees

The fourth fee group consists of variable-based fees—that is, the amount of the fee reflected either the product of a unit price times the number of units, or a fixed percent of a number which varied. Some examples of variable-based fees that are included in the over-$20 system are:

Fees based on channel or frequency miles used;

Fees based on the number of pages in a tariff filing;

Fees based on consideration for license transfer or assignment.

In the Common Carrier Bureau, an applicant for an individual mobile station paid a fee of $15 for the first mobile unit on an application and $9 for each additional mobile unit on the same application (1975 fee schedule). In most instances the applicant requested more than one mobile unit, and the system application fee was at least $24. The fee was paid with a single check.

This class of fees is included for several reasons. First: The total fee paid was usually more than $20 even if a single unit could be less than $20.01. Second: These fees were almost always part of system filings or amendments to existing configurations. Third: Even though the fee paid was a function of some variable, the FCC's cost-to-process was relatively stable. Finally: This definition dramatically simplifies the paperwork associated with filing a claim because the claimant need not file a separate claim for each unit; that is, a carrier which filed a 135 page tariff would not have to submit 135 discrete claims—one would be sufficient.

Fees paid to amend filings covered above

The fifth fee group, representing fees paid to amend a filing or application in one of the other four fee groups already discussed, is included for reasons of administrative convenience. A claimant can quickly assemble all of the fees paid which relate to a single filing or application and can request a refund using a single claim form. Equally as important, the Commission can process all claims related to the filing through one examination of the docket or file folder.

DOES THIS MEAN THAT EVERY FEE TYPE INCLUDED IN THE FIVE FEE GROUPS WILL RECEIVE A REFUND?

No. The definitions and examples given above address one aspect of the fee refund program. They set the limits on the potential universe of claims based on what, how, and why the original fee(s) was (were) paid. The other side of the fee refund equation involves the costs incurred by the Commission to process the application, request or filing. Where the FCC's cost exceeds the fee paid, no refund will be made even if the fee(s) paid falls within one of the five fee groups.

IF THE CLAIMANT PAID MORE THAN ONE FEE, HOW WILL THE CLAIM BE FILED?

As a general rule, the claimant will be instructed to file for a refund based on the individual fees paid. That is, if the claimant paid a filing and a grant fee which are eligible to refunds, the claimant will submit two claims—one reflecting the filing fee (and its refund), and another reflecting the grant fee (and its refund).

Where variable based fees are involved, the claimant will file for his/her refund according to the fee type in the application. If, for example, a common carrier sought permission to install 300 circuits, the claimant would file a single claim which defined the fee type involved and the total amount paid; 300 claims would not be required.

SEPARATE STATEMENT OF COMMISSIONER ABBOTT WASHBURN RE: FUTURE FCC FEES

SEPTEMBER 29,1978.

The spectrum allocation mechanism, whatever its nature should tend toward, if not achieve, economic efficiency. I fully appreciate that present practices provide little reason to suppose that is the case. Further, the institution of a free market in spectrum rights, if achievable, theoretically would provide strong incentives toward efficient spectrum use. However, in order to effect economic efficiency gains any proposal must affect user behavior. I am troubled that at least in the case of the mass media broadcasting services (i.e., AM, FM radio, and TV) the spectrum use fees proposed in today's inquiry and those incorporated in H.R. 13015 may not accomplish those objectives.

In order to be compatible with the hundreds of million of receivers in the hands of the public, the form and bandwith of the broadcast signal is tightly specified. Further, the licensee's leeway in altering the operating characteristics of broadcasting stations is severely limited through our extensive table of assignments and other technical rules required to keep electrical interference within tolerable limits. Given these necessary constraints I fail to see how spectrum fees at whatever level can (except in the extreme case of a broadcast station going off the air) affect licensee behavior or in any way increase economic efficiency.

It is suggested in the inquiry that a fundamental deficiency in our present procedure is the failure of spectrum managers to take economic factors into account. However, in the broadcast services this is not entirely true. There is a robust and essentially free market in the transfer of broadcast properties today. For instance a network affiliated VHF-TV station in a major market might sell for as much as $100 million. Surely, this price must reflect more than the net book value of the hardware—it must include some premium for the licensed right to use the frequency spectrum. I can not help but wonder why the prices derived from the elaborate theoretical formulae in the notice are superior to those determined in this relatively free private market place. Or, more basically, why should the Government set the prices at all? I would hope that parties responding to part D of today's notice would address my concerns expressed above, for without a reasonably clear indication of increased efficiency or other overriding public benefits associated with greatly increased spectrum-use fees, I would have to conclude that the mass media broadcasting services should be exempted from these burdens.

STATEMENT OF COMMISSIONER MARGITA E. WHITE CONCURRING IN PART AND DISSENTING IN PART

Today's notice of inquiry on the Commission fee program contains three proposals. The first (part B) deals with refunds and I am pleased that the process to refund fees of more than $20 will be under way by early next year. The second proposal (part C) is a two-part schedule for calculating future fees based on the cost of Commission services and the value of such service to the licensee, which the courts have held the Commission must take into account. Under the present law, total fees under this schedule may not exceed the Commission's budget.

The difficulty of measuring the "value conferred upon the payor" should not be underestimated. With respect to broadcasting, the Commission's notice states "we believe this can be reasonably accomplished by defining value conferred in accordance with size and possibly the nature of the market covered by the radio licensee's signals. As an example, value conferred on commercial broadcasters would be measured by the size of the audience which the station is technically capable of reaching by virtue of its location, transmission power, authorized operation time, frequency assignment, and other relevant technical considerations."

Perhaps that is the only way to meet the court's mandate, but I have serious reservations about a fee so dependent upon the number of potential households a broadcaster is technically capable of reaching in a given market. This, it seems to me, would escalate the already excessive importance of ratings at the expense of innovative, specialized or local quality programing. When I raised my concern that such a fee structure would handicap minority and specialty programers, it was suggested this might be ameliorated by taking into account the kind and total programed-to or actual audience and adjusting the fee accordingly. Yet such flexible formulas inevitably will force the Commission into passing judgment on format and programing decisions, invite enforcement problems (the incentive would be to claim a more narrow market for a smaller fee and to program to a wider audience for advertising revenue purposes), and raise new threats to broadcasters' first amendment rights.

These and other issues deserve serious discussion before a decision can be made as to whether it is feasible to assign the "value conferred" to Commission licensees. The issues also are distinct between licensees whose activity depends entirely upon the spectrum for their existence, such as broadcasting and radio common carriers, and those for whom the use of radio is either an adjunct to another enterprise or a substitutable resource. With respect to the safety and special radio services, the notice suggests that "where many licensees share a particular channel equally, then it would be assumed that value conferred is also shared equally and should be divided equally among them." Does Sears, sharing a channel for its delivery trucks with the local plumber, derive the same value from using this frequency? I doubt it. Such a formula would seem inherently biased against the smaller entrepreneur. And what of amateur radio and CB radio operators? Is there not a value conferred to society as a wholé by allowing private citizens access to the spectrum?

While we must proceed to inquire as to whether and how a reasonable "value conferred" can be measured in order to expedite a decision as to future fee schedules,[1] now is not the time to pursue the Commission's third proposal for an expensive theoretical paper exercise with the purported goal of suggesting a "simple" spectrum fee to the Congress. The comments invited in part D merely will duplicate the information already being gathered by the House Subcommittee on Communications. Moreover, there is nothing "simple" about the various formulas to measure a "fair market value" on the basis of population, population density, bandwidth, propagation characteristics, per capita income, and other factors.

The implications of a spectrum fee to generate revenues exceeding by "many times" the Commission's

[1] While I understand the need for action on fees, the need is not so precipitous as to require consideration without public notice. The Commission's rush to judgment today does violence to the letter and spirit of the Sunshine Act and open government.

budget are immense, going far beyond the narrow questions posed in part D.

What impact would such sizable fees have on the quality of broadcast programing and, as already noted, on specialty, minority, and local programing? How would they affect the structure of the broadcast and other industries? What of the consumer to whom the costs of the fees ultimately will be passed on? What discretion should the FCC have in setting, allocating and adjusting fees?

What should be done with the fee? While the notice begs this question, the Commission staff presenting it to us suggested it could be deposited in the U.S. Treasury or we "could earmark it." Would the Commission have the power both to determine the fees and their uses? While the courts fortunately have made a reasonably clear distinction between the powers to tax and to levy fees, it is essential that the Commission's jurisdiction be circumscribed carefully, and that Congress itself not become the arbiter of constant changes in fees and their earmarkings. For if the Government has the power to adjust broadcasters' financial base, it has the incentive to mete out rewards and punishment and a political tool to manipulate broadcasting's press and speech freedoms.

I dissent to the inclusion of part D of this notice. I fear it is a first step into a regulatory swampland. It is especially ironic that the Commission approved these proposals on the day the President vigorously renewed his call for less government intrusion and regulation, for more vigilance against inflation, for more Government efficiency and less wasteful Government spending. "We here in Washington must set the example," said the President.

The FCC has set the wrong example.

[FR Doc. 78-28229 Filed 10-6-78; 8:45 am]

Federal Register

TUESDAY, OCTOBER 10, 1978
PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Proposed Rule

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 350]

[Docket No. 78N-0064]

ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish conditions under which over-the-counter (OTC) antiperspirant drug products are generally recognized as safe and effective and not misbranded. The proposed rule, based on the recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products, is part of the Food and Drug Administration's ongoing review of OTC drug products.

DATES: Comments by January 8, 1979; reply comments by February 7, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: Pursuant to Part 330 (21C CFR Part 330), the Commissioner of Food and Drugs received on January 27, 1978, a report of the Advisory Review Panel on OTC Antiperspirant Drug Porducts. In accordance with § 330.10(a)(6) (21 CFR 330.10) (6)), the Commissioner is issuing (1) a proposed regulation containing the mongraph recommended by the Panel, which established conditions under which OTC antiperspirant drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the mongraph on the basis of a determination by the Panel that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph on the basis of a determination by the Panel that the available date are insufficient to classify such conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel to the Commissioner. The minutes of the Panel meetings are on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address given above).

An earlier report of this Panel was submitted to the Commissioner and published in the FEDERAL REGISTER of June 5, 1975 (40 FR 24328). At that time, the Commissioner proposed that any aerosol drug or cosmetic product containing zirconium is a new drug or an adulterated cosmetic. The final regulation was published in the FEDERAL REGISTER of August 16, 1977 (42 FR 41374), and became effective September 15, 1977. It declared that any aerosol drug or cosmetic product containing zirconium is a new drug or an adulterated cosmetic. Any such drug or cosmetic may not be introduced in interstate commerce after September 15, 1977 until safety testing adequate for approval of a new drug application (NDA) has been done.

The purpose of issuing the unaltered conclusions and recommendations of the Panel is to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The Commissioner has not yet fully evaluated the report; the Panel's findings are being issued as a formal proposal to obtain full public comment before the agency reaches any decision on the Panel's recommendation. The report has prepared independently of the Food and Drug Administration (FDA). It represents the best scientific judgment of the members, but does not necessarily reflect the agency position on any particular matter contained in it.

In accordance with § 330.10(a)(2) (21 CFR 330.10(a)(2), all data and information concerning OTC antiperspirant drug products submitted for consideration by the Panel have been handled as confidential by the Panel and FDA. All such data and information will be put on public display at the office of the Hearing Clerk, Food and Drug Administration, after November 6, 1978, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 33(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857.

Based on the conclusions and recommendations of the Panel, the Commissioner proposes the following:

1. That the conditions included in the mongraph, under which the drug products would be generally recognized as safe and effective and misbranded (Category I), be effective 30 days after the date of publication of the final monograph in the FEDERAL REGISTER.

2. That the conditions excluded from the monograph because they would cause the drug to be not generally recognized as safe and effective or to be misbranded (Category II), be eliminated form OTC drug products effective 6 months after the date of publication of the final monograph in the FEDERAL REGISTER, regardless of whether further testing is undertaken to justify their further use.

3. That the conditions excluded from the monograh because the available date are insufficient (Category III) to classify such conditions either as Category I or Category II be permitted to remain on the market, or may be introduced in to the market after the date of publication of the final monograph in the FEDERAL REGISTER, provided that FDA receives notification of testing in accordance with § 330.10(a)(13) (21 CFR 330.10(a)(13)). The period of time recommended by the Panel within which studies must be completed will be carefully reviewed by the Commissioner after receipt of comments on this document. The Commissioner will determine what time period to permit for Category III testing after that review is completed.

The Commissioner recognizes that changes will result in the current marketing practice of these products if the recommendations are fully implemented. The Panel's recommendations include effectiveness testing of the final product formulations for Category I ingredients. Also, the panel is recommending a statement on the lable explaining the level of effectiveness that can be expected from the use of these products.

At this time, the Commissioner seeks comment on these and all other Pannel recommendations. After careful review of all comments submitted in response to this proposal, the Commissioner will issue a tentative final regulation in the FEDERAL REGISTER to establish a monograph for OTC antierspirant drug products.

In the FEDERAL REGISTER of January 5, 1972 (37 FR 85), the Commissioner announced a proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels. In the FEDERAL REGISTER of May 11, 1972 (37 FR 9464), the Commissioner published the final regulations providing for the OTC drug review under § 330.10 which were made effective immediately. Pursuant to these regulations, the Commissioner issued in the FEDERAL REGISTER of September 7, 1973 (38 FR 24391) a request for data and information on all active ingredients utilized in OTC antiperspirant drug products.

The Commissioner appointed the following panel to review the data and information submitted, and to prepare a report pursuant to § 330.10(a)(1) on the safety, effectiveness, and labeling of those products:

E. William Rosenberg, M.D., Chairman.
J. Wesley Clayton, Ph. D., terminated February 1976.
Charles Evans, M.D., Ph. D.
Zenona Mally, M.D.
Jane Rosenzweig, M.D.
Robert Scheuplein, Ph. D.
Eli Shefter, Ph. D.

The panel was first convened on March 15, 1974, in an organizational and informative meeting. Working meetings were held on April 25 and 26, July 9 and 10, August 8 and 9, September 19, 20, and 21, October 31 and November 1 and 2, December 16 and 17, 1974; January 30 and 31, March 24 and 25, April 24 and 25, May 22 and 23, July 9 and 10, August 14 and 15, September 18 and 19, November 20 and 21, December 18 and 19, 1975; January 22 and 23, February 26 and 27, April 29 and 30, June 24 and 25, August 26 and 27, October 28 and 29, December 2 and 3, 1976; February 3 and 4, August 22 and 23, November 17 and 18, 1977; and January 26 and 27, 1978.

Three nonvoting liaison representatives served on the Panel. Marsha W. Gardner served as the consumer liaison until September 1976 and was followed by Emily D. Londos. Both were nominated by the Consumer Federation of America. Robert Giovacchini, Ph. D., nominated by the Cosmetic, Toiletry and Fragrance Association (CTFA), served as the industry liaison.

Dr. Scheuplein, a voting member of the panel from its beginning on March 15, 1974, became employed with FDA in January 1977, as Chief, Dermal and Ocular Toxicology Branch, Division of Toxicology, Bureau of Foods. Although a full-time FDA employee, Dr. Scheuplein remained a voting member of the panel. It was decided that since the panel's basic review had been completed and all major decisions concerning the report already had been made when Dr. Scheuplein's employment with FDA commenced, it would not be necessary to seek a replacement panel member. However, it was also decided that on any formal decision, Dr. Scheuplein's vote should be specifically identified and placed in the public record.

Other employees of FDA served with the Panel as follows: Mary K. Bruch as executive secretary; Lee Geismar as Panel Admisistrator; Lloyd Scott, R. Ph., as Drug Information Analyst served until April 1974, followed by Gary Trosclair, R. Ph., until October 1974, followed by Joe Hussion, R. Ph., until July 1976, followed by Dennis Myers, R. Ph.

In addition to the panel members and liaison representatives, the following individuals were given and opportunity to appear before the panel to express their views either at their own or at the panel's request:

Harold Baer, Ph. D.; Dov Boros, Ph. D.; Edwin V. Buehler, Ph. D.; Frank Carabella, Ph. D.; Robert Choate; Arnold B. Christen, Esq.; George Comstock, M.D.; Ronald Croystal, M.D.; Helen Dickie, M.D.; Robert Drew, Ph. D.; Walter Elvers, D.D.S.; William Epstein, M.D.; D. B. Ericson; Kenneth Ericson; Leon Goldberg, M.D., Ph. D.; Leonard Harber, M.D.; Lester B. Hardy, Ph. D.; G. Hildick-Smith, M.D.; Herman Jass, Ph. D.; Frank Johnson, M.D.; Robert Jones, M.D.; William Jordan, M.D.; Clark Hoffman, Ph. D.; Albert M. Kligman, M.D.; Adalbert Koestner, D.V.M., Ph. D.; Edwin M. Larsen, Ph. D.; Michael Lebowitz, M.D.; Robert Lehnhoff, G. Lord, D.V.M., Ph. D.; Henry C. Maguire, Jr., M.D.; Bertil Magnusson, M.D.; Howard I. Maibach, M.D.; Paul Majors; Lollie Marchant; Joseph Page, Esq., F. Polley, Ph. D.; Joseph Robinson, Ph. D.; F. R. Rolle, Ph. D.; W. E. Smith, M.D.; W. G. Spector (Great Britain), M.A., M.B., B. Ch.; H. E. Stokinger, Ph. D.; Irwin Stolloff, M.D.; A. Wehner, D.M.D.; Hans Weill, M.D.; Sidney Wolfe, M.D.; William Wooding; and Ronald J. Wulf, Ph. D.;

No person who so requested was denied and opportunity to appear before the panel.

The panel has thoroughly reviewed the literature and the various data submissions, has listened to additional testimony from interested parties, and has considered all pertinent data and information submitted through January 27, 1978, in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations (21 CFR 330.10), the panel's findings with respect to OTC antiperspirant drug products are set out in three categories:

Category I. Conditions under which OTC antiperspirant drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC antiperspirant drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

I. Submission of Data and Information

Pursuant to the notice published in the Federal Register of September 7, 1973, requesting the submission of data and information on OTC antiperspirant products, the following firms made submissions:

A. SUBMISSIONS BY FIRMS.

Firm and marketed products

Aerosol Techniques, Inc., Milford, Conn. 06460—Super Dri-Mist Heavy Duty Antiperspirant, Rite-Aid Extra Dry Antiperspirant Spray.

Armour-Dial, Inc., Chicago, Ill. 60608—Dial Antiperspirant (Aerosol, Roll-on), (Scented, Unscented).

Bristol-Myers Products, New York, N.Y. 10022—Ammens Foot Cooler, Ban Roll-on Antiperspirant Deodorant (Scented and Unscented), Ban Antiperspirant Cream Deodorant, Ban Deodorant Spray, Dry Ban Antiperspirant Deodorant Spray, The Dry System Antiperspirant Cream Concentrate, The Dry System Antiperspirant Lotion Concentrate, Mum (Cream, Roll-on, Spray), Deodorant Mum Powder Spray Antiperspirant Deodorant, Softalc Deodorant Spray Powder (Scented and Unscented), Trig Antiperspirant Roll-on Deodorant (Scented and Unscented), Ultra Ban 5000 Antiperspirant (Scented and Unscented), Ultra Ban Powder Spray.

Carter Wallace Products Div., Cranbury, N.J. 08512—Arrid Cream, Arrid Cream with Chlorophyll, Arrid Antiperspirant Roll-on Deodorant, Light Powder Arrid Extra Dry Anti-Perspirant Spray (Scented and Unscented), Arrid Antiperspirant Spray (Scented and Unscented).

Colgate-Palmolive, Piscataway, N.J. 08854—Hour After Hour Antiperspirant.

Gillette Co., Boston, Mass. 02114—Gillette Right Guard (Antiperspirant, Natural Scent Antiperspirant, Powder Dry Antiperspirant), Soft and Dri Lightly Powdered Antiperspirant Deodorant, Soft and Dri Antiperspirant (Scented and Unscented), X-Hydra Antiperspirant Deodorant (Cream, Liquid), Right Guard Extra Strength Antiperspirant, Gillette Right Guard Double Protection Antiperspirant (Scented and Unscented), Super Dry Soft and Dri (Scented and Unscented).

Leon Products, Inc., Jacksonville, Fla. 32216—Certain Dri Antiperspirant Deodorant.

Pennwalt Corp., Rochester, N.Y. 14623—Fresh Stick.

Person and Covey, Inc., Glendale, Calif. 91201—Drysol.

Procter & Gamble Co., Cincinnati, Ohio 45224—Secret Antiperspirant, Sure Antiperspirant.

Redfoot Products Co., Inc., Detroit, Mich. 48228—Redfoot Powder.

Sterling Drug, Inc., New York, N.Y. 10016—Body All Powdery Spray Deodorant and Antiperspirant, Dorothy Gray Antiperspirant Atomist Deodorant, Dorothy Gray Spin Roll-on Deodorant Antiperspirant, Dorothy Gray Antiperspirant Cream, Givenchy Gentleman Antiperspirant Deodorant Spray, Tussy Dry Antiperspirant Spray, Tussy Roll-on Deodorant, Tussy Roll-on Deodorant Extra Strength (Scented and Unscented), Tussy Cream Deodorant, Tussy Extra Strength Cream Deodorant, Tussy Cream Deodorant Unscented.

Texas Pharmacal Co., San Antonio, Tex. 78296—Allercreme Aerosol Antiperspirant Deodorant (Scented and Unscented), Allercreme Antiperspirant Deodorant Creme (Scented and Unscented), Allercreme Liquid Spray Antiperspirant Deodorant (Scented and Unscented), Allercreme Roll-on Antiperspirant Deodorant (Scented and Unscented), Maxi-Dry Hypo-allergenic Antiperspirant Roll-on (Scented and Unscented), Maxi-Dry Hypo-allergenic Antiperspirant Cream (Scented and Unscented).

USV Pharmaceutical Corp., Tuckahoe, N.Y. 10707—Mitchum Antiperspirant Spray (Scented and Unscented), Mitchum Antiperspirant Powder (Scented and Unscent-

ed), Mitchum Cream Antiperspirant, Mitchum Antiperspirant Liquid (Scented and Unscented), Mitchum Antiperspirant Stick.

In addition, the following firms made related submissions:

Firm and submission

Aerosol Techniques, Milford, Conn. 06460—Aluminum chlorhydroxide.
Carter Wallace Products Division, Cranbury, N.J. 08512—Zinc phenol sulfonate.
Proctor & Gamble, Cincinnati, Ohio 45224—Zirconyl hydroxychloride.
Reheis Chemical Co., Berkely Heights, N.J. 07922—Chlorhydrol Powder, Chlorhydrol Solution, Micro-Dry, Micro-Dry Ultrafine, Basic Aluminum Bromide, Rehydrol, Chloracel Solid, Chloracel Solution.
Wickhen Products, Inc., Hugenot, N.Y. 12746—Wickenol 303, 321, 323, 324, 340, 363D.

B. LABLED INGREDIENTS CONTAINED IN MARKETED PRODUCTS SUBMITTED TO THE PANEL.

Aluminum chlorhydrate, aluminum chlorhydrate compound, aluminum chlorhydrate zirconium oxychloride aluminum glycinate, aluminum chlorhydroxide, aluminum chlorhydroxide complex, aluminum chlorhydroxide-propylene glycol complex, aluminum chlorhydrol, aluminum chloride, aluminum chlorohydrate, aluminum chlorohydroxide, aluminum glycinate, aluminum hydroxychloride, aluminum potassium sulfate, aluminum sulfate, aluminum-zirconium chlorohydrate complex, aluminum-zirconyl hydroxychloride complex, basic aluminum bromide, benzethonium chloride, boric acid, 8-hydroxyquinoline sulfate, magnesium stearate, potassium aluminum sulfate, salicylic acid, sodium aluminum chlorhydroxylactate, sodium aluminum lactate, water soluble lanolin, zinc phenolsulfonate, zirconium-aluminum-glycine complex, zirconium chlorhydrate-aluminum chlorhydrate-glycine complex, zirconium chlorhydrate, zirconium chlorohydrate, zirconyl hydroxychloride, zirconium oxychloride.

After reviewing the labeled ingredients contained in marketed antiperspirant products submitted to the Panel, there seemed to be no uniform system of nomenclature for describing the antiperspirant materials since many labeled ingredients appeared to have more than one name. For example, the submitted labels contained seven different names for aluminum chlorohydrate. In addition, the Panel was informed that when labels stated that products contained aluminum chlorohydrate and aluminum chloride, in fact it was one of the aluminum chlorhydrates (i.e., dichlorohydrate or sesquichlorohydrate), depending on the aluminum-to-chlorine ratio. The CTFA Antiperspirant Task Force developed a uniform system of nomenclature for the antiperspirant active ingredients which has been accepted by both the CTFA Cosmetic Ingredient Nomenclature Committee and the United States Adopted Names Council.

The Panel has decided to adopt this nomenclature and will use it throughout the report. A more complete definition of the antiperspirant active ingredients is included later in the report. The following table compares the submitted names to the adopted names for the antiperspirant active ingredients.:

COMPARISON OF SUBMITTED NAMES AND ADOPTED NAMES FOR ANTIPERSPIRANT ACTIVE INGREDIENTS

Adopted Nomenclature	Labeled Ingredient Nomenclature	Metal:Halide Ratio Range	Al:Zr Ratio Range
Aluminum chloride	Aluminum chloride	---	---
Aluminum chlorohydrate	Aluminum chlorhydrate Aluminum chlorhydrate compound Aluminum chlorhydroxide Aluminum chlorhydroxide complex Aluminum chlorohydrate Aluminum chlorohydroxide Aluminum hydroxychloride	2.1 down to but not including 1.9:1.	---
Aluminum dichlorohydrate	Aluminum chlorhydroxide, aluminum chloride Aluminum hydroxychloride, aluminum chloride Aluminum chlorhydrol, aluminum chloride	1.25 down to and including 0.9:1.	---
Aluminum sesquichlorohydrate	Aluminum chlorhydroxide, aluminum chloride Aluminum chlorhydrate, aluminum chloride Aluminum chlorhydrol, aluminum chloride	1.9 down to but not including 1.25:1.	---
Aluminum zirconium trichlorohydrate	Aluminum chlorhydrate, zirconium chlorhydrate Aluminum chlorohydrate, zirconium chlorohydrate Aluminum-zirconium chlorohydrate complex	2.1 down to but not including 1.5:1.	2.0 up to but not including 6.0:1.
Aluminum zirconium tetrachlorohydrate	---	1.5 down to and including 0.9:1.	2.0 up to but not including 6.0:1.
Aluminum zirconium pentachlorohydrate	---	2.1 down to but not including 1.5:1.	6.0 up to and including 10.0:1.
Aluminum zirconium octachlorohydrate	---	1.5 down to and including 0.9:1.	6.0 up to and including 10.0:1.
Aluminum chlorohydrex PG	Aluminum chlorhydroxide-propylene glycol complex	2.1 down to but not including 1.9:1.	---
Aluminum dichlorohydrex PG	---	1.25 down to and including 0.9:1.	---
Aluminum sesquichlorohydrex PG	---	1.9 down to but not including 1.25:1.	---
Aluminum chlorohydrex PEG	---	2.1 down to but not including 1.9:1.	---
Aluminum dichlorohydrex PEG	---	1.25 down to and including 0.9:1.	---
Aluminum sesquichlorohydrex PEG	---	1.9 down to but not including 1.25:1.	---
Aluminum zirconium trichlorohydrex Gly	Zirconium chlorhydrate-aluminum chlorhydrate-glycine complex. Zirconium-aluminum-glycine complex	2.1 down to but not including 1.5:1.	2.0 up to but not including 6.0:1.
Aluminum zirconium tetrachlorohydrex Gly	Aluminum chlorhydrate zirconium oxychloride aluminum glycinate. Aluminum-zirconyl hydroxychloride complex	1.5 down to and including 0.9:1.	2.0 up to but not including 6.0:1.
Aluminum zirconium pentachlorohydrex Gly	Zirconium chlorhydrate-aluminum chlorhydrate-glycine complex.	2.1 down to but not including 1.5:1.	6.0 up to and including 10.0:1.
Aluminum zirconium octachlorohydrex Gly	---	1.5 down to and including 0.9:1.	6.0 up to and including 10.0:1.
Aluminum bromohydrate	Basic aluminum bromide	2.1 down to but not including 1.9:1.	---
Aluminum sulfate	Aluminum sulfate	---	---
Buffered aluminum sulfate	Aluminum sulfate and sodium aluminum lactate	---	---
Potassium aluminum sulfate	Potassium aluminum sulfate	---	---
Sodium aluminum lactate	Sodium aluminum lactate	---	---
Sodium aluminum chlorohydroxy lactate	Sodium aluminum chlorhydroxy lactate	---	---

C. CLASSIFICATION OF INGREDIENTS

1. *Active ingredients.* The Panel has classified the following as antiperspirants:

a. Aluminum bromohydrate.
b. Aluminum chlorhydrates.[1]
(1) Aluminum chlorohydrate.
(2) Aluminum dichlorohydrate.
(3) Aluminum sesquichlorohydrate.
(4) Aluminum chlorohydrex PG.[2]
(5) Aluminum sesquichlorohydrex PG.
(6) Aluminum dichlorohydrex PG.
(7) Aluminum chlorohydrex PEG.[3]
(8) Aluminum sesquichlorohydrex PEG.
(9) Aluminum dichlorohydrex PEG.
c. Aluminum chloride.
d. Aluminum sulfate.
e. Aluminum zirconium chlorhydrates.
(1) Aluminum zirconium trichlorohydrate.
(2) Aluminum zirconium trichlorohydrex Gly.[4]
(3) Aluminum zirconium pentachlorohydrate.
(4) Aluminum zirconium pentachlorohydrex Gly.
(5) Aluminum zirconium tetrachlorohydrate.
(6) Aluminum zirconium tetrachlorohydrex Gly.
(7) Aluminum zirconium octachlorohydrate.
(8) Aluminum zirconium octachlorohydrex Gly.
f. Buffered aluminum sulfate.
g. Potassium aluminum sulfate.
h. Sodium aluminum chlorohydroxy lactate.

[1]The Panel has designated this term as the generic term for the various aluminum chlorhydrate compounds listed above. Since the chemical properties of the various aluminum chlorhydrates are similar, and the evidence presented to the Panel on the toxicity of these materials suggest that they have the same risk potential, the Panel will discuss these ingredients as a group in this document. This same reasoning is applicable to the aluminum zirconium chlorhydrate compounds listed above.

[2]Propylene glycol complex.

[3]Polyethylene glycol complex.

[4]Glycine complex.

The Panel has included the following table in which the active ingredients have been categorized:

Categorization of Antiperspirant Ingredients

Active ingredient	Nonaerosol dosage form	Aerosol dosage form
Aluminum bromohydrate[1]	II (S, E)[2]	II (S, E)
Aluminum chlorhydrates	I	III (S)
Aluminum chloride (15 Pct. or less aqueous solutions)	I	III (S)
Aluminum chloride (alcoholic solutions)	II (S)	II (S)
Aluminum sulfate	III (S, E)	III (S, E)
Aluminum zirconium chlorhydrates	I	II (S)
Buffered aluminum sulfate	I	III (S)
Potassium aluminum sulfate	III (S, E)	III (S, E)
Sodium aluminum chlorohydroxy lactate	III (E)	III (S, E)

[1]This ingredient has never been marketed in this country for a material extent or material time and, therefore, cannot receive general recognition of safety and effectiveness.

[2](S) Refers to safety considerations. (E) Refers to effectiveness considerations.

2. *Other ingredients.* The following are not considered active antiperspirant ingredients:

Benzethonium chloride.[1]
Boric acid.[2]
8-Hydroxyquinoline sulfate.[2]
Magnesium stearate.[3]
Salicylic acid.[2]
Sodium aluminum lactate.[4]
Water soluble lanolin.[3]
Zinc phenolsulfonate.[5]

[1]Reviewed by Antimicrobial I Panel for antibacterial claims.

[2]Under review by Antimicrobial II Panel for antifungal claims.

[3]Considered to be inactive and/or pharmaceutical necessity.

[4]The Panel concludes that the presence of this ingredient in an antiperspirant is to act as a corrective agent rather than as an active antiperspirant ingredient. Therefore, it will not be discussed as an active ingredient in this document.

[5]This ingredient was not submitted as an antiperspirant active ingredient. It is not considered to have antiperspirant activity, and, therefore, will not be discussed further in this document.

D. REFERENCED OTC VOLUME SUBMISSIONS

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call for data notice published in the FEDERAL REGISTER of September 7, 1973 (38 FR 24391). The volumes shall be put on public display after November 9, 1978, in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address given above).

II. GENERAL STATEMENTS AND RECOMMENDATIONS

A. INTRODUCTION

The charge to this Panel was to evaluate the safety and effectiveness of antiperspirant drug products. These products are widely used. In 1975, sales of antiperspirant and deodorant products in the United States were $619,350,000 (Ref. 1). According to section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)), antiperspirants, because they affect a function of the body, i.e., reduce the amount of perspiration (sweat) production, are classified as drugs. Deodorants are classified as cosmetics because they do not affect a bodily function, and were, therefore, excluded from the Panel's charge in the call for data. Because most of the ingredients considered in this report have both antiperspirant and deodorant properties, it is necessary to keep in mind the distinction between these two interrelated functions. These two functions are discussed in more detail later in this document. (See part II., paragraph H. below—Effectiveness of Antiperspirants.)

REFERENCE

(1) Ryan, J., "What the Public Spent for Drugs, Cosmetics, Tioletries in 1975," Product Management, 5:25-31, 1976.

B. HISTORY OF ANTIPERSPIRANTS

The early Egyptian, Greek, and Roman literature note attempts to control body odor through the practice of various bathing, perfuming, and toilet procedures. During the time of Hippocrates, it was known that vaporous substances were given off through the skin. Galen discussed the insensible perspiration that is discharged from the skin's surface that can, on occasion, be so increased as to take the form of fluid. During the 17th century, the French raised to an art the use of perfumed oils and waters to disguise body odors.

The eccrine sweat glands were first described by Malpighi, who observed watery droplets issuing from the orifices. One hundred years later Purkinje and Wendt in 1833 and Breschet and Roussel de Vouzgeme in 1834 independently described the eccrine sweat gland. They were differentiated from the apocrine gland in 1922 by Schiefferdecker (Ref. 1).

The relationship between body odor and perspiration was undoubtedly little understood during ancient times, and the practices used either washed away or masked unpleasant body odor (Refs. 2 and 3). The first commercial products to alleviate the problem began to appear on the market during the late 1800's, with the first trade named product "Mum" appearing in

1888. The active ingredient in "Mum" was zinc oxide in a cream base. The claims dealt with diminishing axillary odor. "Everdry" appeared in 1902 and "Hush" in 1908. Both of these products were simple solutions of aluminum chloride. Ferric chloride was the active ingredient in "Nonspi," a product introduced in 1910. "Odo-Ro-No," a product introduced commercially in 1914, was the first product to use magazine advertising to nationally introduce a product; it was claimed to remedy excessive perspiration and keep dresses "clean and dainty." In 1919, the "Odo-Ro-No" advertising theme was changed to introduce, for the first time, the concept that perspiration and body odor are socially shocking and offensive.

These early products were mainly simple solutions of aluminim chloride which were applied with a dampened or cotton pledget. During the 1930's the American Medical Association discussed antiperspirants in its journal in the "Quacks and Nostrums" section. A formula for such products was printed in the journal, and physicians began prescribing solutions of aluminum chloride, as high as 25 percent, to patients. In addition, pharmacists began making their own solutions and an over-the-counter drug business developed. In the 1930's, the first aluminum chloride cream product, "Arrid," appeared. It stressed antiperspirant effectiveness and fabric safety (Ref. 4).

The active antiperspirant ingredients in these early products were invariably salts of aluminum, either aluminum chloride or aluminum sulfate. These highly acid products had among their disadvantages the rotting of clothing and the tendency to irritate the axillary tissue.

The introduction of cream products allowed the chemist to utilize buffers and/or anticorrosive agents which reduced the potential for fabric damage and skin irritancy. Unfortunately, these additives also decreased the product's ability to inhibit perspiration. a variety of buffer systems was utilized during this period, in attempts to decrease irritancy and fabric damage and not inhibit efficiency. However, in the late 1940's a new active ingredient, aluminum chlorihydrate, was introduced. This active ingredient was less acid than the former salts and, therefore, it was suggested, less irritating to the skin and less damaging to fabrics. In addition, this new ingredient gave the formulator a broader range of formulation capabilities (Refs. 5 and 6).

During the late 1950's, sodium zirconium lactate was introduced as an effective antiperspirant active ingredient. This ingredient, however, was later determined to be the cause of granulomatous reactions in the axillary vault of certain users. Its use was discontinued. Later other salts of zirconium were suggested as effective antiperspirant active ingredients (Ref. 7).

During the 1940's these products were used mainly by women, and use was generally seasonal. A survey taken during World War II concluded that women considered these products only slightly less important than soap, rouge, lipstice, and face powder. Since that time, however, these products have become as important to men, which may explain the 4- to 25-percent increase in sales per year since 1945.

Packaging for convenience has also played an important role in the history of these products. The original liquid formulations were "runny" and irritating to skin and fabric. The cream forms were easier to handle, less irritating to skin and fabric, but also less effective. In 1947, the squeeze spray package was introduced and in 1955 the roll-on package. Aerosol packaged products were first unsuccessfully introduced in the early 1950's, and the first successful products were marketed in the 1960's (Refs. 8 through 11).

Since the time that the ancients recognized body odor and Purkinje discovered the sweat glands, a considerable amount of research has been conducted on the anatomy, histology, physiology, biochemistry, and pharmacological aspects of the glands of the axillary vault. Further, studies have been conducted on the microbial flora of the axilla and the relationship of the microbial flora to perspiration and axillary odor. From this work two general categories of products have been developed. They are: (1) The deodorants, whose purpose is either to mask the odor, or by the use of antimicrobial agents, decrease the microbial flora of the axilla; and (2) the antiperspirants, whose purpose is to inhibit perspiration.

References

(1) Schieferdecker, P., "Die Haurdrusen des Menschen und des Saugetieres, ihre Bedeutung Sowie die Muscularis Sexualis," Zoologica, 27:1-154, 1922.

(2) Kuno, J., "Human Perspiration," C. C. Thomas, Springfield, 1956.

(3) Stoller, L., "Deodorants Their Place in Modern Cosmetics," The Givaudanian, June 1960.

(4) Anonymous, "External and Internal Personal Deodorants and Antiperspirants," Redbook Magazine, August 1962.

(5) Govett, T., and M. G. deNavarre, "Aluminum Chlorohydrate, New Antiperspirant Ingredient," American Perfumer and Essential Oil Review, 49:365-368, 1947.

(6) Mueller, W., and R. P Quatrale, "Antiperspirants and Deodorants," in "The Chemistry and Manufacture of Cosmetics," vol. 3, edited by deNavarre, M. G., Continental Press, Orlando, pp. 205-226, 1975.

(7) Lewe, I. A., "Granulomas of the Axillae Caused by Deodorant," AMA Archives of Dermatology, 75:765-767, 1957.

(8) Anonymous, "Stopette Spray Deodorant," Modern Packaging, 26:136-141, 292, and 294, 1953.

(9) Anonymous, "The Roll-on Deodorant," Modern Packaging, 28:80-81, and 189-190, 1955.

(10) Anonymous, "Roll-On Applicator," Modern Packaging, 33:98-99, 1960.

(11) Anonymous, "Reheis: Soon Aerosol Antiperspirants Will Dominate Market," Drug Trade News, Mar. 10, 1969, p. 22.

ANATOMY AND PHYSIOLOGY OF THE AXILLA

The human axilla (underarm area) is a concave structure and is marked in adults by conspicuous hair tuft considered to be hallmark of secondary sexual development and by its secretion and perspiration, which is readily visible and often perceptible to the nose.

The specialized structures within the axillary area include the glands—apocrine, eccrine, and sebaceous—the terminal hairs and the various nerves and blood vessels that supply these structures, as well as the remaining nonspecialized epidermis, dermis, and subcutaneous tissues.

1. *Apocrine sweat glands*—a. *Embryology and developement.* At about 5 months of fetal life the fetal precursors of the apocrine glands appear from the side of the hair follicles as solid epithelial buds above the level of the sebaceous gland. At this point the hairs are fully formed. The buds then proceed to form cords which eventually canalize. The duct lies close to and parallel to the hair follicle. Rarely, instead of opening into the hair follicle, the duct opens directly onto the surface of the skin (Ref. 1). The ducts appear over the entire surface of the body. Subsequently, most disappear, so that in the adult the characteristic distribution of the apocrine glands is the axillary, perianal, and areolar areas. In the axilla of humans they are such flourishing organs that they cannot be considered rudiments of a waning organ system (Ref. 2). Modified apocrine glands form the mammary gland, ceruminous gland of the external auditory canal, and the glands of Mol of the eyelid.

The axillary apocrine glands are poorly developed in childhood and enlarge considerably at the approach of puberty. Although these axillary apocrine glands remain relatively undifferentiated up to 7 years of age, some individual glands may develop precociously even in children 5 years of age. There are incipient accumulations of fluid in the lumen, and some of the glands become distended, perhaps due to a blockage of the duct. Beginning in the seventh year and continuing through adolescence, the glands

become progressively larger and gradually attain the structure and histochemical properties of functional glands (Ref. 2).

It is reported (Ref. 3) that in a high proportion of persons of Chinese and Japanese ancestry the apocrine glands are much less well developed than in the majority of blacks and Caucasians. The genetic basis of this difference and its significance in relation to axillary odor is discussed in the section on microbiology of the axilla.

These glands, even in preadolescent children, are larger than the accrine glands, measuring up to 2 millimeters. They are therefore macroscopically visible from the cut surface, lying either deep in the dermis or in the subcutaneous tissue.

In old age the apocrine glands undergo gradual involution, but this is not clearly related to the fading of the sex hormones (Ref. 4).

b. *Innervation.* The innervation of the human apocrine sweat gland is derived from adrenergic fibers of the autonomic nervous system. The apocrine duct, however, does not receive nerve fibers (Ref. 4).

The myoepithelial cells resemble smooth muscle fibers, but arise from the ectoderm. Direct observation of axillary glands through and incision in the axillary skin shows the myoepithelium contracting synchronously in peristaltic waves with the appearance of a droplet of sweat at the orifice (Refs. 4 and 5). Pharmacologic, mechanical, and electrical stimuli which normally initiate contraction of smooth muscle also induce contraction in myoepithelial cells and concurrently bring about discharge of apocrine sweat.

c. *Secretory process.* The apocrine gland secretion is slow and scanty. Total sweat response to be given stimulus is less than 1 milliliter (ml). Glands do not secrete continuously, and there is a long latent period between active cycles (Refs. 4 and 6). There are great individual differences. The free border of tall cells has large microvilli through which the secretions into the lumen probably occur. Since the lumen of normal apocrine tubules only rarely contains visible granules and cell debris, the granules in each cell must dissolve in the terminal cytoplasm before secretion takes place. The secretion could take place by either fragmentation of the terminal part of the microvilli or by oozing out of the secretion through intact microvilli. True apocrine secretion—that is, a pinching off and loss of part of the cell to form the secretion—does not occur. Therefore, apocrine is a misnomer for these glands.

The secretion, sweat or perspiration, is milky, viscid, and pale gray, but may be colored otherwise (Ref. 2). It is odorless when it reaches the surface of the skin and becomes odoriferous only upon bacterial decomposition. When collected, the secretion dries into glistening gluelike granules.

d. *Endocrine factors.* Although the gonadal hormones may play an initial role in development and maintenance of the glands, once the glands mature, they seem relatively self-sufficient. Proof of this has been shown in ovariectomized women without hormonal replacement who have normal apocrine glandular function (Ref. 7). Additionally, topical application or implantation of estrogens or androgens have no effect on the glands. Biopsy specimens from the same woman obtained at weekly intervals in a menstrual cycle showed no changes (Refs. 7, 8, and 9). The same is true with monthly biopsies of pregnant women (Refs. 8 and 9).

e. *Pharmacological responses.* Intradermal injections of adrenalin were effective in producing apocrine sweat in all subjects tested (Ref. 10). The results of testing with acetyl-*beta*-methylcholine are confusing. In one report it was possible to see apocrine sweating responses to intradermal injections (Ref. 2). This conflicts with the data from Shelley and Hurley (Ref. 10) and Hurley and Shelley (Ref. 4), who report that cholinergic agents were completely ineffective in producing apocrine sweating in the axilla. Returning to Montagna's studies (Ref. 2), prior treatment with atropine followed by cholinergic agents inhibited the flow of both apocrine and eccrine sweat.

f. *Function.* The function of the apocrine glands in man is uncertain. The glands may play a role in interpersonal subliminal communications. (See part II. paragraph E.6. below—Pheromones.)

g. *Pathology.* Bromhidrosis or osmidrosis is malodorous sweat. This is often a function of hygiene. Sometimes, however, it may be caused by ingestants such as garlic.

Chromhidrosis is colored sweat. In true chromhidrosis the pigment is a lipofuchsin. Pseudochromhidrosis is a condition in which the sweat colors when it reaches the skin surface. This is usually due to chromogenic bacteria, especially corynebacteria. Ingested drugs and dyes may at times color the sweat.

Hematohidrosis (bloody sweat) is very rare (Ref. 11). It may occur as a part of a bleeding diathesis.

Fox-Fordyce disease is a disorder of the apocrine glands comparable to miliaria of the eccrine glands. The etiology is unknown. The pathophysiologic sequence is the appearance of a small vesicle in the apocrine duct which brings about the inflammatory response. This in turn leads to rupture and plugging of the duct (Ref. 12). It generally occurs in females after puberty and is amenable to therapy with the female hormones in anovulatory doses (Ref. 13).

Hidradenitis suppurativa is a chronic and indolent disorder of the apocrine sweat glands. The sexes are equally susceptible, but axillary lesions are relatively more common in women, and anogenital lesions are more common in men. Most cases occur between the ages of 16 and 40. The onset is more frequent in the hottest months of the year. The cause is unknown. No specific microorganism has been incriminated. The role of local factors is disputed. Maceration leading to keratinous obstruction of the sweat duct is probably an important factor in axillary hidradenitis (Ref. 14). Anogenital hidradenitis is frequently associated with acne conglobata and perifolliculitis capitis, but axillary hidradenitis frequently occurs alone. The earliest inflammatory changes are seen within and around the apocrine glands, the ducts of which may be distended with leucocytes. Groups of cocci may be seen within the glands and in the dermis. Later, the eccrine glands are similarly involved. In simple hidradenitis, cosmetics and especially antiperspirants are usually forbidden. Obesity should be corrected and any metabolic defects such as diabetes should also be corrected. Prolonged administration of an antibiotic is sometimes adequate for control. Superficial radiation therapy and systemic corticosteroid therapy have been advocated, but are less likely to provide lasting control than is surgical attack on the apocrine-bearing areas.

2. *Eccrine sweat glands.*—a. *Embryology and development.* In man there are 2 to 5 million glands spaced at 143 to 339 per square centimeter (Ref. 15). As they are all formed at birth, they are most dense at that time; their density is diluted by growth of the body. Infant skin has 8 to 10 times as many sweat glands per unit area as the skin of an adult. The first fetal precursors are seen in the fourth fetal month in the palms and soles. In the fifth fetal month they appear in the axilla. From the fifth month on, they appear generalized. Their distribution shows characteristic patterns around hair follicles (Ref. 16). They are found on all skin except lips, the glans penis, the inner surface of the prepuce, the clitoris, and the labia minora. The subsequent functioning of sweat glands may in some way reflect these differences in development; thus, sweating of the palms and soles is in response to different stimuli than from the general body surface. Kuno in 1956 suggested that sweat glands that develop earlier in fetal life may have arisen from

a more primitive stem cell than those with later development (Ref. 15).

The myoepithelial cells, which in functional glands resemble smooth muscle fibers insinuated between the epithelium and basement membrane, are not recognizable during fetal life. Nor is the connective tissue stroma around the entire gland differentiated until after birth (Ref. 17).

From the 5th to 10th months of age the glands become gradually active and attain their characteristic histologic features. All the histochemical attributes of the adult glands become discernible by the first postnatal year (Ref. 2).

b. *Anatomy.* The secretory coil lies deep in the lower dermis or in the subcutaneous tissue. It is composed of two cell types—the large clear cells which are secretory and the small dark cells whose function is uncertain. All the cells are attached to the basement membrane. The function of the secretory coil is to produce from plasma a watery secretion to be modified by the duct.

The duct is composed of two layers of uniform cuboidal cells. Its function is to propel the sweat toward the surface and using its active enzyme system to modify the secretion of the coil. The intra-epidermal sweat duct unit is a coil to the surface which travels in a helical manner through the epidermis.

c. *Histochemistry and staining properties.* Clear cells are stippled with delicate lipid granules, while the dark cells have only a few. These granules are not secreted even when the glands are stimulated (Refs. 18, 19, and 20). Most eccrine cells have a diffuse yellow pigment, probably a carotinoid, in their cytroplasm (Ref. 21.) Pigment granules are also noted, increasing in number as a person gets older. Large quantities of glycogen are found in both clear and dark cells (Ref. 22). A substantial amount of cytochrome oxidase is found in both coil and duct, indicating that these areas are rich in mitochondria. Large amounts of carbonic anhydrase are found in both the duct and secretory coil (Ref. 23). Monoamine oxidase is found in moderate amounts. Succinic dehydrogenase is found in large amounts (Refs. 24, 25, and 26). The eccrine gland has more phosphorylase than any other cutaneous appendage. The glands are high in *beta*-glucuronidase activity and aminopeptidase. Alkaline phosphatase is found only in the deeper coils.

The eccrine gland cells contain no cholinesterase. However, the surrounding nerves are rich in specific cholinesterases (Ref. 27 through 31). Delicate, strongly reactive nerve fibers are wound around the coils of the secretory segment. Some of the coils of the duct, but not the straight segments, are also surrounded by nerves that contain specific cholinesterases. The relation of sweat glands with cholinesterase-rich nerves is established as soon as the glands are formed in 4½-month-old fetuses (Ref. 29). The nerves around the sweat glands contain specific cholinesterase (Ref. 2).

d. *Pharmacological responses.* Dale and Feldberg (Ref. 32) in 1934 first demonstrated that eccrine glands are supplied with nerves that, although belonging anatomically to the sympathetic nervous system, are cholinergic. Sweating is readily induced by acetylcholine, pilocarpine, methacholine, carbachol, and even enhanced by physostigmine, a strong inhibitor of cholinesterase. It is inhibited by atropine (Refs 33, 34, and 35). The adrenergic drugs adrenalin, noradrenalin, and isopropyl noradrenalin also cause increased sweating (Refs. 36 through 39). Adrenergic-stimulated sweating is not inhibited by atropine, but is inhibited by dibenamine, tolazoline, and dihydroergotamine (Refs. 37, 38, and 39). Histamine has no sudorific effect.

Severance of the postganglionic sympathetic nerves to the eccrine sweat glands causes a prompt and remarkable decrease in their responsiveness to direct pharmacologic stimulations (Refs. 35 and 40 through 43).

e. *Function of the gland.* Adequate eccrine gland function is vital for maintenance of normal body temperature under usual climatic conditions. Subjects who are deprived of the cooling effect of sweat evaporation are unable to tolerate temperatures much higher than over 80° F. or the excess body heat that arises from exertion at evn lower temperatures. This cooling function of sweat is provided by the mass of sweat glands over the body surface. It has been repeatedly demonstrated, however, that even total inhibition of axillary sweat does not compromise the body's ability to maintain proper thermal regulation. However, since total body inhibition might interfere with the thermal regulatory process, the Panel concludes that antiperspirants should not be permitted for use over the entire body.

While the sweat contains measurable amounts of urea and lactic acid, the popular belief that sweating is necessary to "purify" the blood in an excretory manner analogous to the kidney is not born out by fact. Many people live in air-conditioned or other cool environments and suffer no ill effects from the fact that they sweat little or not at all (Ref. 44).

The techniques for studying the function of the gland are:

(1) Collection of sweat in bags or on pads (Ref. 45).

(2) Direct measurement of water loss (Refs. 44 and 46).

(3) Sampling by means of microcanulae passed into the duct or coil.

(4) Measurement of electrical resistance. Resistance varies with moisture from sweat on the skin and within the duct (Refs. 46 and 47).

(5) Visualization of individual sweat droplets. This can be done in many ways—by direct microscopy, by forming plastic impressions (Ref. 48), or by indicators which color on contact with water. The test most commonly used is the starch-iodine test, in which starch and iodine applied to the skin react to produce a blue color in the presence of sweat (Refs. 49 and 50). The technique is to dry the skin, paint it with 2 percent iodine in alcohol, then press either a paper containing starch against the surface of the skin, or apply starch by painting it on the skin in a castor oil solution of 50 grams (g) of starch per 100 ml. Alternate color indicator tests are bromphenol blue (Refs. 51, 52, and 53) or quinizarin.

For the gland to function, an intact sympathetic nervous system is needed. Deprived of postganglionic nerves, the gland ceases to function, but remains histologically normal. As mentioned before, the sweat gland is unusual by being cholinergic in function, although supplied with sympathetic nerves. It may respond to adrenergic agents, but probably does not have a true adrenergic innervation. The activity of these glands from nervous stimuli is controlled by three factors:

(1) *Thermal.* This is controlled by the heat-regulating center in the hypothalamus, which in turn is activated by changes in the temperature of the blood perfusing it and also, to some extent, by afferent stimuli from the skin. The efferent pathways from the hypothalamus involve nerve fibers relaying in the medulla, lateral horn of the spinal cord, and the sympathetic ganglia (Ref. 54). Thermal regulation of sweating occurs more on the upper trunk and face (Ref. 35).

(2) *Mental.* The centers and pathways are not fully known. Some are in the frontal areas of the brain. Mental stimuli cause increased sweating on the palms and soles (postulated as acting to improve the grip in times of intense activity), in the axilla, and also, to a lesser degree, on the body surface in general.

(3) Gustatory. Sweating around the mouth and on the forehead and nose is stimulated after hot and spicy foods (Ref. 55). Neural reflexes for gustatory sweating have not been fully worked out.

f. *Composition of eccrine sweat.* Under basal conditions there are few impulses passing to the sweat gland. During basal conditions sweat contributes minimally or not at all to water loss. The water loss during nonsweating periods is termed transepidermal

water loss and occurs at a low rate through the intact stratum corneum (Ref. 44). Maximal stimulation can induce 12 liters per 24 hours with an initial maximal rate of 3 liters in an hour (Ref. 56).

The sweat duct is largely responsible for modification and concentration of sweat. For that reason the composition of sweat may vary depending on the rapidity at which sweat passes through the duct. Sweat is usually hypotonic, but with rapid sweating it may approach isotonicity. The constituents of sweat are sodium chloride, potassium, urea, lactate, and glucose in small amounts. Lactate is present at 4 to 40 milliequivalents/liter (meq/liter), greater than the plasma concentration. The pH is 4 to 6.8.

Changes is electrolytes present in sweat may be found in Cushing's disease, Addison's disease, nephrosis, cardiac failure, and after administration of various hormones such as aldosterone.

An increase of sodium chloride in sweat has been reported in miliaria (Ref. 57). There is also a well-known increase of sweat electrolytes in fibrocystic disease, and this is used as a diagnostic test (Ref. 58). Normal children have up to 60 meq sodium chloride per liter of sweat. Fibrocystic children are above this and often above 90 meq. In adults, levels of sodium and chloride are naturally higher, so partial forms and carriers of fibrocystic disease in adulthood cannot be diagonosed with sweat tests.

Sweat glucose levels may be increased in diabetes, but such increases do not correlate with blood levels.

g. *Pathology.* Hyperhidrosis (excessive sweating) may be generalized or asymmetrical. Generalized (symmetrical) hyperhidrosis may be either thermoregulatory in etiology or from mental stimuli. Thermoregulatory causes may result from an instability of the hypothalamic center, induced by febrile illnesses. This may persist, after cessation of the fever, for many months. There may be an infectious cause such as malaria or tuberculosis. Other miscellaneous causes for generalized thermoregulatory hyperhidrosis are as follows: Gout, diabetes, hyperthyroidism, hyperpituitarism, obesity, menopause, malignancy, alcohol intoxication, and postvomiting.

Sweating produced from mental stimuli occurs especially on the palms, soles, and axillae. Most cases presented to the dermatologist are of this type. Only rarely are deep-seated emotional problems found. Usually the enhanced activity is considered a facilitation of already existing nervous pathways. It usually appears in childhood or around puberty, and often spontaneously improves around age 25 (Ref. 59).

Asymmetric hyperhidrosis can occur from lesions at any place along the sympathetic pathways to the nerve endings at the gland (Refs. 54 and 59). It may occur reflexly from visceral disturbances (Ref. 60) or around areas of anhidrosis (absence of sweating) (Ref. 54). Compensatory hyperhidrosis occurs on normal remaining sweat glands when those elsewhere are not functioning from neural disease or skin disease or after sympathectomy (Ref. 61).

In the treatment of hyperhidrosis, reassurance alone is often sufficient. Anticholinergic drugs such as 0.025 percent benzoyl scopolamine hydrobromide are effective, especially in the axilla (Ref. 62). Also effective are propantheline, formalin, and aluminum salts. Systemic treatment includes the atropinelike drugs (Ref. 63). Usually, however, the side effects are more troublesome than the sweating. These side effects are dryness of the mouth, visual disturbances, glaucoma, hyperthermia, and convulsions. Atropine is not used to control sweat because of its pronounced systemic actions. Propantheline is used in doses beginning at 15 mg three times daily. Ganglionic blocking agents can inhibit sweating, but side effects from hypotension are usually to troublesome. Sedatives and tranquilizing drugs have been used in cases with pronounced emotional factors. Surgical management of extreme hyperhidrosis has included sympathectomy and also local excision of the axillary vault (Ref. 64).

In contrast to hyperhidrosis, anhidrosis may occur. The cause may be from the brain with organic lesions at any level, hysteria, or hyperthermia. It may originate in the spinal cord and nerves from such organic lesions as tumor, syringomyelia, or leprosy. It will occur subsequent to sympathectomy or the use of ganglionic blocking agents or anticholinergic drugs.

The anhidrosis may also be caused by malfunction of the sweat gland itself. This occurs in the aplasias, such as congenital ectodermal dysplasia and ichthyosis and in the cutaneous atrophies such as acrodermatitis atrophicans, scleroderma, and Sjogrens disease.

Lack of sweating may occur from localized lesions distal to the gland at the level or the duct of the intraepidermal sweat duct unit with conditions such as miliaria and eczema.

Anhidrosis of uncertain origin include neonatal sweat gland fatigue and idiopathic acquired anhidrosis (Ref. 65).

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D. MICROBIOLOGY OF THE AXILLA

A knowledge of the microbial flora of the normal axilla and of the effect of antiperspirants on these organisms is pertinent to two aspects of the evaluation of safety and effectiveness of antiperspirants: (1) Is the use of antiperspirants associated with an increased risk of bacterial infection due to disturbance of the normal flora? This question is discussed in the section on safety (see part II. paragraph G.3. below—Microbiological safety considerations.); and (2) are the claims of deodorancy of antiperspirants in the nature of drug claims that are based on a change of body function, or are they cosmetic claims that are not based on a change of body function?

Knowledge of the microbial populations of the normal axilla has developed with remarkable slowness despite the fact that, as will be shown, bacteria are the immediate cause of the underarm odor which the American public spends hundreds of millions of dollars annually to combat. Among the more significant contributions to this subject are the papers by Shehadeh and Kligman in 1963 (Ref. 1), Somerville in 1969 (Ref. 2), Marples and Williamson in 1969 (Ref. 3), Prince and Rodgers in 1974 (Ref. 4), and Voss in 1975 (Ref. 5). A review of the subject will be found in the book by Noble and Somerville (Ref. 6).

The variation in total numbers of aerobic bacteria in the normal axilla was studied by Prince and Rodgers (Ref. 4). Among 10 subjects cultured repeatedly over a 2-week period, variations up to more than 100-fold were found. Only two subjects varied less than 10-fold. These data are important in showing that a "decline" in numbers of bacteria in a test subject in an evaluation of a soap, an antiperspirant, or some other product could be

merely a chance fluctuation in numbers, even if the decline is as much as a 90 percent or even a 99 percent decrease in aerobic popuations.

Although anaerobic propionibacteria, both *P. acnes* and *P. granulosum*, are frequently present, often in substantial numbers, the predominant organisms in the axilla grow best in the presence of air. Most studies have been limited to aerobic culture methods.

In most axillae well over 90 percent of the organisms present are either aerobic diphtheroids, coagulase negative staphylococci, or a combination of these two groups. Both of these groups are heterogeneous.

Among the bacteria of the genus *Staphylococcus* that occur on the human body, the most important distinction is between *S. aureus* and all other staphylococci. *S. aureus* is a coagulase positive organism that has the capability of causing a wide variety of infections, some minor, some severe. The coagulase test is the most widely used method for making a distinction among them. Further classification of coagulase negative staphylococci is a matter of containing research and disagreement among specialists. Marples and Williamson, in their studies of axillary flora (Ref. 3), found that most of these organisms fell into Baird-Parker Group SII.

The aerobic diphtheroids of the axilla do not include any organisms with major disease-producing capability. A major differentiation in this group is based on their response to the addition to the growth medium of certain lipids such as Polysorbate 80 (which contains oleic acid). Most of the axillary aerobic diphtheroids are lipophilic, that is, they grow better and form larger colonies if a lipid supplement such as Polysorbate 80 is provided.

The relative numbers of coagulase negative cocci and aerobic diphtheroids in the axilla vary widely in different individuals. Marples and Williamson found that on the average, persons with a predominance of diphtheroids harbored total populations of several million per square centimeter, whereas those with more than 50 percent cocci averaged several hundred thousand total bacteria per square centimeter. They also showed that if the diphtheroids were selectively suppressed by antibiotic treatment, the cocci resistant to the antibiotic increased proportionately. Thus, the diphtheroids appear to limit the growth of cocci in the normal axilla (Ref. 3).

With respect to organisms other than propionibacteria, aerobic diphtheroids, and coagulase negative cocci, the data are fragmentary and sometimes conflicting. Noble and Somerville (Ref. 6) state that 5 to 10 percent of adults are carriers of *S. aureus* in the axilla, based on extensive studies by Somerville and a review of data by others. Prince and Rodgers found a much higher carrier rate of *S. aureus* and documented an interesting seasonal change with a substantial increase in the summer. Unfortunately, they based their identification on mannitol fermentation and pigment formation and did not confirm it with the coagulase test (Ref. 4).

Pseudomonas aeruginosa is a potential pathogen of considerable significance. Prince and Rodgers (Ref. 4) did not find this organism in any of their approximately 1,400 axillary cultures from 235 subjects over a 2-year period. Noble and Somerville (Ref. 6) agree that this organism does not appear to colonize the axilla in normal adults, but add that it may do so in persons with a reservoir of this organisms elsewhere, as in a burn.

Gram negative rods, other than *Pseudomonas*, have been a subject of interest in several studies. Prince and Rodgers (Ref. 4) found a substantial change in number of gram negative rods with the season. *Acinetobacter* was the most common gram negative rod by a wide margin, with coliforms the only other group present except for a single person who carried *Proteus* and *Achromobacter* as well as *Acinetobacter*. In winter, 21 percent of 33 subjects tested 6 times over 13 days were carriers of gram negative rods on at least one occasion. In summer, 80 percent of 20 subjects were similarly positive. However, the tests in summer were more numerous and extended over a longer time period (11 tests in 25 days). Some subjects were positive for these organisms in all tests, others in only one or two tests. Those with 60 percent or more of their cultures positive were called persistent carriers, the others transient carriers. Thirty-five percent of all subjects were persistent carriers in summer and 9 percent were persistent carriers in winter.

Somerville (Ref. 2) found that the axillary flora in children was more varied than in adults. Aerobic spore-forming bacilli and *Sarcina* were more common, and aerobic diphtheroids were less frequently present. Mimae (*Acinetobacter*) have been reported in children by a number of observers.

Two relatively mild diseases in which members of the normal flora are causally involved are trichomycosis axillaris and erythrasma. In both, certain of the aerobic diphtheroids are regularly present and contribute to the development of the condition.

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E. AXILLARY ODOR.

In deciding whether claims of deodorancy of antiperspirants are drug claims or cosmetic claims it is necessary to consider the mechanisms involved in producing the odor and the probable mechanism of the claimed deodorancy. The term "axillary odor" in this report denotes the strong smell characteristic of the axilla, which many persons seek to prevent by washing, shaving, and applying antiperspirants and other deodorants.

There is convincing evidence that axillary odor arises from the growth of bacteria in the secretion of apocrine sweat glands. Shelley, Hurley, and Nichols (Ref. 1) collected drops of secretion from the orifices of single apocrine glands of the axilla and showed that this fluid was odorless at the time of discharge but acquired the characteristic axillary odor if held under conditions permitting bacterial growth. Since apocrine glands are a part of the normal anatomy of the axilla, and bacteria are universally present in this region, one must inquire further for the reasons why odor may be present or absent.

A description of the mechanisms controling secretion by apocrine and eccrine sweat glands is presented in the section on the anatomy and physiology of the axilla. (See part II. paragraph C. above—Anatomy and Physiology of the Axilla.)

1. *Genetics of axillary odor and of cerumen.* In Japan, where axillary odor has long been viewed as a medical problem, laymen as well as physicians have observed an association between that condition and a particular type of cerumen (ear wax). Matsunaga of the National Institute of Genetics, Mishima, Japan (Ref. 2), reviewed previous studies and reported additional data on the dimorphism in human normal cerumen.

The cerumen of most Japanese is of the "dry" type. It is gray, brittle, and not sticky. Smaller numbers of Japanese have cerumen of the wet type; it is brownish and sticky. From surveys

of 23,000 Japanese reported by various authors from 1934 through 1958, Matsunaga found the mean frequency of wet cerumen to be 16.3 percent. Family studies from as early as 1932 supported the hypothesis that "the ear-wax types are controlled by a pair of autosomal alleles with complete dominancy, W and w, the genotype of wet cerumen being WW or Ww and the genotype of dry cerumen ww."

The frequency of wet cerumen in American Caucasians and Blacks was estimated by Matsunaga to be 97.5 percent and 99.5 percent, respectively, on the basis of studies of children of Japanese mothers married to American Caucasians or American Blacks. Other surveys of representative groups have reported low frequencies of the wet type of cerumen in peoples of East Asia, such as the Chinese and Koreans, and high frequencies in Caucasians, such as residents of Germany, as well as those native to African countries, such as Ghana and Nigeria. (Ref. 3).

The morphogenetic basis of the association between cerumen type and susceptibility to axillary odor is attributed to the morphologic and functional similarity between the cerumen glands of the external auditory canal and the apocrine glands of the axilla. The apocrine glands are reported to be much less well developed in those with dry cerumen than in persons with wet cerumen.

2. *Evidence concerning the kinds and numbers of bacteria that cause axillary odor.* The evidence presented by Shelley and his colleagues (Ref. 1) to prove that axillary odor resulted from multiplication of bacteria in the secretions of apocrine sweat glands included the following: (1) No odor was detected from freshly collected secretion; (2) a strong smell characteristic of axillary odor was produced in 6 hours if apocrine sweat collected from an uncleansed axilla was held at room temperature; (3) refrigeration at 0° C prevented the appearance of odor; (4) no odor developed in apocrine sweat from axillae that were shaved and disinfected with alcohol; (5) hexachlorophene prevented the development of odor in vitro for 14 days; (6) in vivo, the axillae cleansed with hexachlorophene remained odor free as much as 18 hours after control axillae had developed odor.

a. *Attempts to determine which kinds of bacteria cause axillary odor.* Although the evidence cited above supported the essentiality of microbial action, it did not identify the organisms involved. Strauss and Kligman (Ref. 4), in an attempt to resolve this problem, inoculated various organisms into apocrine sweat. They reported that some strains of *Aerobacter aerogenes, Escherichia coli, Proteus,* coagulase negative micrococci, coagulase positive micrococci, and diphtheroids produced the characteristic odor. However, in a later study, Shehadeh and Kligman (Ref. 5) found that suppression of gram-positive organisms in the axilla by treatment with topical neomycin prevented the development of axillary odor despite a high population of gram-negative rods (*Alkaligenes, Proteus,* and *Aerobacter*). They commented that the earlier report was in error, that gram-negative bacteria growing in apocrine sweat do not produce typical axillary odor but that "* * * gram-negatives have a putrid odor of their own in vitro * * *. This clinically inapparent odor is that of the organisms themselves and not a consequence of the decomposition of apocrine sweat."

Meyer-Rohn (Ref. 6) reported that *S. epidermidis* and corynebacteria isolated from the axilla can produce typical axillary odor when grown in "sterile sweat."

From the published evidence it is not possible to state which of the organisms of the axilla produce axillary odor nor what numbers must be present to generate the odor. The causative organism is probably one or more of the gram-positive species. *S. ediderm idis,* propionibacteria, or aerobic diphtheroids of various kinds are obvious possibilities.

b. *Amount of reduction in bacterial populations required to produce a deodorant effect.* The Advisory Review Panel on OTC Topical Antimicrobial I Drug Products considered the issue of deodorancy of products under their purview. They reported in the FEDERAL REGISTER of September 13, 1974 (39 FR 33108) as follows:

> It was the estimate of a group of experts from industry and academia (who appeared before the Panel to discuss the effectiveness of antimicrobials in the classes of products currently being reviewed by the Panel) that approximately a "70 percent reduction" in the microbial flora (as measured by handwashing tests) would produce a deodorant effect. The exact percent reduction required to achieve a deodorant effect either on the entire body or in the axillae was not established by the data submitted. The view of the Panel is that perhaps some bar soaps which achieve a 90 percent or more reduction of gram-positive organisms may be so active as to be harmful.

In the absence of any other evidence, the present Panel cannot accept a 70 percent or a 90 percent reduction in bacterial populations of the axilla as having any significance with respect to the deodorant effect or the possible harmful effect. This position is based on the knowledge that total numbers of bacteria in the healthy axillae of different people or of the same person at different times vary more than 100-fold (Refs. 7 and 8), and such differences have been observed without any noticeable axillary odor (Ref. 9). since the organisms that cause axillary odor are unknown, it is possible that they constitute less than 1 percent of the total population in axillae with or without odor. If that were the case, data with respect to changes in the total population of bacteria might not be a valid indicator of changes in the numbers of those odor-producing organisms.

3. *The role of eccrine sweat and of hair in the genesis of axillary odor.* From the preceding evidence it is clear that axillary odor depends upon an adequate supply of apocrine secretion and conditions favorable to the multiplication and metabolic activity of some as yet unidentified bacteria. Conditions that favor retention of the necessary substrate, and those favorable to rapid multiplication of bacteria, should be conducive to the development of odor. The following appear to be reasonable assumptions about variables that influence the axillary ecosystem and odor production:

Shaving the axilla is helpful in preventing axillary odor. Hair of the axilla tends to favor odor development by several mechanisms. The apocrine secretion is somewhat sticky and is presumably retained to an appreciable extent on hair. When the axilla is washed there may be a greater retention of bacteria as well as of apocrine secretions in the presence of hair than when the bare skin is fully exposed to the mechanical and detergent action of washing. Multiplication of the bacteria of the axilla is probably favored by the increased surface provided by hair, as this expands the environment in which there is a favorable combination of nutrients, wetness, and temperature. Relative wetness of the axilla is probably one important factor in determining whether odor develops. The principal source of wetness in the axilla is eccrine sweat. In this way eccrine sweat exerts some influence on odor production.

4. *Mechanisms of the deodorant effects of antiperspirants.* Advertising claims often assert that antiperspirants will prevent axillary odor, and it appears that consumers commonly use antiperspirants with the intention of suppressing axillary odor. Submitted data show that standardized use of a number of products was followed by an odor-free state or a diminished odor for time periods that would be meaningful to a user. Disregarding the masking effects of perfumes, which are clearly cosmetic in nature, there are two mechanisms that are at least theoretically possible in this deodorancy process: (1) Suppression of relative wetness and (2) direct antibacterial action.

Even though antiperspirants reduce the level of perspiration in the axilla,

most antiperspirants do not make the axilla dry enough to interfere totally with bacterial growth. The deodorant effect of antiperspirants, therfore, is not merely secondary to their reducing the moisture necessary for bacteria to grow in.

In view of the probable inadequacy of the antiprespirant action as an explanation of the deodorant effect of antiperspirants, one might expect to find good evidence for an antibacterial mechanism. Unfortunately, the available evidence is fragmentary and inadequate to support a definitive conclusion as to this effect.

There is surprisingly little information on the question of a direct antibacterial action of antiperspirants on bacteria in the axilla. The only bacteriologically adequate data that we have found in the literature was that of Shehadeh and Kligman (Ref. 5) concerning neomycin, an ingredient not now used in antiperspirants. Other tests have been made using antisperspirant ingredients on the forearm or on callus or agar in vitro.

Leyden and Kligman (Ref. 10) found that a drop of 1 percent solution of aluminum chlorohydrate inhibited the growth of *S. aureus, Pseudomonas aeruginosa, Escherichia coli, Pityrosporum ovale,* and *Candida albicans* on agar. When applied to skin of a forearm, occluded by a sheet of polythylene, 0.1 ml of a 20 percent solution supressed growth of all bacteria over an area of 25 square centimeters. If the skin was occluded 48 hours before the test, an initial population of millions of bacteria per square centimeter was reduced to zero. In each case, the lowest concentration was reduced to zero. In each case, the lowest concentration of aluminum chlorohydrate tested gave the results cited. Similar results were obtained with various concentrations of aluminum chloride hexahydrate and aluminum acetate in vitro and in vivo.

Blank, Moreland, and Dawes (Ref. 11) reported that daily application of 20 percent solutions of aluminum chloride, aluminum chlorhydroxide, and aluminum sulfate to the axilla resulted in a reduction of numbers of grampositive cocci. Their methods were only crudely quantitative and were not suitable for the detection of the diphtheroids which are reported to constitute the most abundant organisms in the axillae of most adults. In laboratory tests of the growth of bacteria on hydrated callus from the sole of the foot, they found that micrococci grew in the presence of 1 percent concentrations of the aluminum salts and were inhibited by 2 percent concentrations. Results were erratic in tests with diphtheroids and with coliform organisms at the concentration levels tested, 0.25 to 4 percent. All three salts in aqueous solution were bactericidal for micrococci and diphtheroids, but the killing concentrations ranged from 1:100,000 to below 1:100.

It is distressing to find no published data on the effects of active ingredients of currently used antiperspirants on odor-producing bacteria of the axilla in spite of the fact that this kind of evidence might be the most reliable way of determining the extent and duration of the deorant effect of antiperspirants.

Although the evidence is grossly deficient, the Panel concludes that it is highly probable that the principal deodorancy effect of antiperspirants in current use is a result of antibacterial actions of the products. Persumably these different products have variable levels of antibacterial activity, and in the axialla, this effect is modified by local conditions as well as by the elapsed time from application of the product. These and other factors were not investigated by the Panel when it became apparent that the deodorant effect was primarily one that did not depend upon alteration of body function.

5. *Conclusion.* The panel finds that axillary odor is produced by bacterial action on apocrine secretion, and this action is aided by the wetness of the axilla which is largely attributable to eccrine sweat glands. The deorant action of antiperspirants cannot be accounted for primarily as suppression of eccrine gland action. The evidence for direct antibacterial action is fragmentary, but this appears to be the probable mechanism insofar as antiperspirants are indeed deodorants.

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6. *Pheromones.* A discussion of axillary odor is incomplete without some discussion of pheromones. Since odoriferous secretions are widespread throughout the animal kingdom and recognized up and down the phylogentic scale as important elements of social communication, it is reasonable to consider the possibility of a human chemical communication. These chemical communicators are called pheromones and are defined as substances or mixtures of substances which are produced by an individual and received by a second individual of the same species in which they produce one or several specific actions.

The pheromones are classified in two ways. First, they can be discussed with reference to their mode of recognition, i.e., olfaction, ingestion, or absorption.

Second, they can be classified according to the action on the recipient. There are three kinds of pheromones that can be discussed according to their action on the recipient. There can be an immediate and reversible process rapidly acting through neurohumoral (chemical nerve transmitter) channels. These usually show fairly immediate responses and are known as "releaser" pheromones.

The second kind are known as "primer" pheromones. This action is slow to develop, demands prolonged stimulation, and initiates a chain of physiologic effects in the recipient.

The third kind of action on the recipient can be "imprinting." This is stimulation at a critical period in development, resulting in a permanent modification of behavior in the adult.

The presence and effects of pheromones have been studied both in the laboratory and under natural free conditions (Refs. 1 through 4).

In lower primates, Evans and Goy (Ref. 5) found while studying the ring tailed lemur that their social integration is dependent on a whole series of olfactory responses, and they felt that these animals possessed an olfactory repertoire whose complexity rivals the more sophisticated visual and acoustic systems of larger-brained primates.

Curtis, et al. (Ref. 6) in their studies of the rhesus monkey noted certain

volatile fatty acids of vaginal origin were trigger factors in the mating process and that similar chemicals are present in high concentration in ovulating or pregnant human females.

What is the likelihood that there is such a thing as a human pheromone? Pheromonal primer effects are nearly universal in mammals, including primates, while humans have a complete set of organs which are traditionally described as nonfunctional, but which if seen on some other mammal would be recognized as a part of a pheromonal system.

Consider the evidence that might suggest that the adult human axilla is a useful, functioning source of sexual attractant. Axillary sweating functions apart from the usual thermoregulatory sweating system. It is stimulated by emotional signals, not just heat. It becomes active only after puberty. The combination of a potentially odorous substrate; a hospitable, warm, moist environment for the requisite bacterial growth; a large volume of evaporate vehicle for odor dissemination; and a wicklike tuft of hair all point to an efficient system for broadcasting chemical signals.

That pheromonal stimulation from axillary odors is not consciously perceived does not militate against such a possibility; pheromones in the animal kingdom typically appear to act at an unconscious level. Nor is the requirement that bacteria are necessary for odor production evidence that the human axilla should, by nature, be odor free. Well-known vaginal sex attractants in monkeys are produced by the action of the vaginal flora on odorless precursors.

Obviously, discussions of putative human pheromones are now no more than speculative, but this Panel feels that it would be erroneous to dismiss out of hand the presence of useful olfactory exchange between humans, or that axillary odor might serve that purpose.

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F. PHARMACOLOGY OF ANTIPERSPIRANTS

There is no agreement on the mechanism of action of the commonly used antiperspirant ingredients despite their widespread use for many years. Three possible mechanisms have been suggested in the recent scientific literature.

Shelley and Hurley (Ref. 1) believe that aluminum or zirconium ions bind to the COOH groups of keratin. They go on to state that metallic ions penetrate some distance into the sweat duct. A functional closure results from reaction of the metal ion with the intraductal keratin fibrils. They postulate further that the intraluminal pressure rises to the point where it acts by a feedback mechanism, stopping glandular secretion. The obstruction continues until the affected keratin is shed in the normal process of desquammation. The effects on the sweat duct reach deeper than the superficial regions located in the stratum corneum (the most superficial portion of the epidermis).

Experiments reported by Papa and Kligman in 1967 (Ref. 2) contradict in part the hypothesis that poral closure is responsible for anhidrosis. They suggested that the aluminum salts alter the permeability to water of the sweat duct and that the sweat then diffuses out into the skin instead of being deposited on the surface in droplets. In support of their view they cite evidence that show (1) the lack of restoration of function with cellophane tape stripping, (2) identification of patent sweat pores with methylene blue iontophoresis, (3) lack of distention of the ducts during thermal sweating, and (4) lack of formation of PAS positive, diastase resistant casts in the treated ducts. Shelley and Hurley (Ref. 1) term this "leaky hose" analogy a "strange theory."

Patocha (Ref. 3) reported that aluminum chloride is capable of markedly influencing the activity of cholinesterase and acetylcholinesterase. This suggests the possibility that aluminum ion might diminish sweating by interrupting the neurologic input to the gland.

Sato and Dobson (Ref. 4) demonstrated that the anhidrotic effect of glutaraldehyde, a well-known protein precipitant, could be removed by cellophane tape stripping. Gordon and Maibach (Ref. 5), however, showed that the effect of aluminum salts could not. This suggests a simple, superficial occlusive effect of glutaraldehyde which is different from the still disputed effects of the metallic salt antiperspirants.

At one of the Panel's meetings it was suggested by an industry representative that a complex of zirconium chlorhydrate, aluminum chlorhydrate, and glycine formed a totally inert gel which worked by superficially occluding the sweat pore (Ref. 6). The Panel received no data in support of this hypothesis.

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G. SAFETY OF ANTIPERSPIRANTS

The Panel addressed the question of safety of antiperspirants in its discussion of aerosol drug and cosmetic products containing zirconium in the FEDERAL REGISTER of June 5, 1975 (40 FR 24328). In that discussion it was pointed out that since the benefits derived from the use of OTC antiperspirant products are not large, there must be little or no risk associated with their use to be acceptable for OTC use. As was also pointed out in that discussion, there is a substantial potential difference in the kinds of adverse reactions that might result from the same ingredient, depending upon its route of application.

Antiperspirants are applied in two chief ways: one, directly to the skin in the form of a lotion, cream, stick, or roll-on; two, in the form of a spray, delivered either via a pressurized propellant system or by way of a mechanically actuated spray system.

1. *Systemic safety of antiperspirants applied directly to the skin.* Because of the relatively impermeable properties of the skin to metallic salts and complexes, there is no evidence to suggest that the direct application of antiperspirant products to intact skin has been associated with systemic toxic effects (Ref. 1).

Percutaneous dermal toxicity test have been performed on animals for a great number of antiperspirants. The reported results indicated no ill effects on the animals (Refs. 2 through 12).

2. *Skin safety of anitperspirants applied directly to the skin.* There is little doubt, however, that some users of antiperspirant products have experienced local cutaneous irritation as a result of using those products. In its discussion of aerosol drug and cosmet-

ic products containing zirconium, published in the FEDERAL REGISTER of June 5, 1975 (40 FR 24330), the Panel concluded that such reactions constitute an acceptable risk. The statement made at that time about locally applied zirconium salts applies similarly to the whole range of antiperspirant ingredients:

1. *Adverse reactions.* These adverse reactions are ordinarily not serious and are reversible.

2. *Site of reaction.* These reactions occur locally at the site of application where they are to be expected, where they are visible, and where, once detected, they can be treated and the product discontinued.

3. *Incidence.* The reported prevalance of such adverse reactions is extremely low, of the order of 6 per million units sold.

4. *Body burden.* Because these are applied topically, the entrance of zirconium-containing particles into the body is reduced virtually to zero when the skin's barrier is intact.

5. *Effectiveness.* This topically applied antiperspirant is reasonably effective.

6. *Misuse.* The Panel recommends that adequate labeling be provided to warn against applying the product to open, broken or abraded skin where the skin's barrier is breached. But even if this warning is ignored by the consumer, and the product is misused, the Panel believes the consequences will not be unreasonably severe.

The Panel believes that the risks of the nonaerosolized product are inherent in the effective use of the drug and are therefore unavoidable; other topically applied, nonaerosolized antiperspirants give comparable adverse reactions. Overall, the impact of these adverse reactions on the health of the target population is not large; these reactions are ordinarily not serious; they are reversible; and their prevalance is low.

Further on in this report it will be noted that certain antiperspirant ingredients for direct skin application are classified as category III on the basis of safety. This designation is based partly on published reports characterizing some ingredients as more irritating than others and on the inadequacy of safety information about some others (See part III., paragraph B.3. below—Category III conditions under which the available data are insufficient to permit final classification at this time.)

None of the metallic antiperspirant ingredients have been reported to cause allergic contact dermatitis to any significant extent (Ref. 13), and, as noted above, antiperspirant-induced irritation appears to be readily reversible.

Antiperspirant ingredients have been blamed by some users for inducing papular or follicular eruptions in the axillae, and it seems clear that certain individuals find themselves unable to use these products (Ref. 14). These eruptions are not treated as agent-specific conditions in standard dermatologic texts. In the judgment of the Panel, such eruptions may be secondary to a nonspecific irritation of follicular openings induced by these products. Individuals who have this difficulty appear able to associate the eruption with antiperspirant use clearly enough to discontinue use of the products. Long-term effects of such reactions do not appear to be a problem.

The dermatologic conditions that are indigenous to the axillae include hidradenitis suppurativa, Fox-Fordyce disease, and seborrheic dermatitis. While the use of antiperspirant products is frequently interdicted in those diseases, current medical thought does not implicate antiperspirants as significant initial etiologic agents.

3. *Microbiological safety considerations*—a. *Contaminants.* Since antiperspirants are often applied to the skin of the axilla after shaving, it is important that they should not contain pathogenic organisms that might cause infection of abraded skin. The limited microbiological information available currently is not adequate to establish that the antibacterial activity of aluminum chlorhydrates and other active antiperspirant ingredients is sufficient to suppress growth of all contaminants. The Panel is aware that there is a very low incidence of axillary infections attributed to the use of antiperspirants by the user. The Panel's judgment is that the antiperspirant ingredients placed in Category I and Category III have been so widely used with so little evidence of infection that they can be accepted as generally recognized as safe with respect to the question of infection.

If antiperspirants with new active ingredients are introduced in the future, they should be tested to determine whether such organisms as *Candida, Pseudomonas spp, Staphylococcus aureus* or *Streptococcus pyogenes* can survive or multiply in them on repeated challenge in use. It is possible that these organisms can in fact penetrate through sites of abrasion or cuts caused by shaving and set up foci of infection.

b. *Suppression of normal flora and possible compensatory multiplication of resistant organisms.* The deodorant action of antiperspirants now widely used appears to result from inhibition of bacteria normally present in the axilla. (See part II., paragraph E.4. above—Mechanisms of the deodorant effects of antiperspirants.) This suppressive action is far from complete and is commonly overridden by the organisms so that underarm odor develops after some hours. Probably, it is because this bacterial suppression of normal flora is only limited and partial and that other, more resistant, transient organisms are kept from multiplying and possibly causing infections. We are not aware of any evidence that infections have occurred on this basis.

If antiperspirants with new active ingredients are introduced in the future, they should be evaluated with respect to disturbances of the normal flora that might lead to infection due to secondary growth of organisms capable of causing infection.

4. *Safety of aerosol products.* The majority of safety concerns over antiperspirants involve those that are applied as sprays. In brief these concerns can be categorized as relating to (a) the added body burden which might be incurred by inhaling the antiperspirant product over many years, (b) problems with various propellant systems, and (c) other agents, such as talc, which are added to spray preparations to impart cosmetic properties to the products.

a. *Safety of long-term use of aerosolized antiperspirants.* The most popular method of applying antiperspirants to the axillae and other parts of the body is by aerosol-generating systems. The aerosol particles generated by these systems should have sufficient velocity to be directed at, and impact on, the target site. The particles must have adhesive properties so that they will stick to the skin on impact.

In the early 1960's pressurized aerosol delivery systems for antiperspirants were introduced into the market (Ref. 15). This method of applying the antiperspirant rapidly became the most popular dosage form. The consumer preferred the convenience in application of the antiperspirant and the feel of the material which impacted on the axillae.

The pressurized systems that are presently being marketed make use of liquified compressed gases (propellants) to discharge the antiperspirant formulation. The propellants by virtue of their high vapor pressure expel the formulation from its container as a fine particulate spray. The particle size distribution of the aersol produced by the escaping propellant depends on a number of formulation factors, including the pressure inside the container and the dimensions of the actuator chamber (Refs. 16 and 17). The actuator is the button which the consumer presses to activate the valve system, which in turn permits the contents of the container to be released. This button and the valve system influence not only the spray pattern of the generated aerosol but also the particle size distribution.

There are two general classes of antiperspirant pressurized aerosol formulations now marketed. In one case the antiperspirant is discharged from the container as fine solid particulates (suspension formulations) and in the other it is dissolved in fine droplets of

the spray. The former of these aerosol sprays has a cosmetic appeal to the public because it does not leave a moist feeling on the skin.

Although the majority of the aerosolized antiperspirant produced by these devices impacts on the area of skin toward which the spray is directed, there will always be some material which will reach the breathing zone of the user. The divergent nature of the spray will place some of the aerosol directly in the air. A substantial amount of turbulence is produced at the target site by the escaping propellant gases which hinders the impaction of some of the finer particles. These particles are carried away by the gases to the immediate envionment of the area sprayed. Some particles will also reach the environment by rebounding after hitting the skin (Ref. 18). The aerosol particles reaching the air about the user can remain suspended for relatively long periods of time.

The public is not able to purchase self-pressurized spray packagess of antiperspirants. There are two types available; the squeeze bottle and the spray pump (Ref. 19). The former of these consists of a soft squeezable plastic container which when compressed forces the antiperspirant formulation through a small orifice where it is broken up into coarse droplets. In general, the applied force is not sufficient to obtain as finely a dispersed aerosol as is derived from propellant pressurized systems. Spray pumps on the other hand do produce a fine spray of the formulation which can closely duplicate that obtained with pressurized systems (Ref. 19). These pumps are primed by depressing a spray actuator which forces the formulation through the nozzle.

The sprays produced by these systems will not experience the same degree of turbulence when they impact on the skin as the propellant devices. This means that a somewhat greater fraction of the aerosol spray will impact on the target site and less will escape to the environment than is the case with the propellant systems. The Panel was not provided with data that would conclusively rule out any potential inhalation risk for these products. For this reason, their safety is judged by the same standards as those for the pressurized aerosol systems.

Aerosol particles can invade the body through inhalation. Whether they will be deposited in or be exhaled from the respiratory tract depends on their physical characteristics and certain physiological parameters. Numerous depositon studies have been carried out to delineate the parameters which influence the degree and sites of deposition. These investigations have been summarized in a number of publications (Refs. 19, 20, and 21).

The most important fact in governing the deposition of aerosols in the respiratory tract is the size, shape, and density of the particles. It is customary to characterize aerosol particles in terms of their effective aerodynamic size (Ref. 20). The proposed deposition models suggest that particles with an aerodynamic diameter greater than 10 micrometers (um) will be deposited almost exclusively in the nose and mouth. The ability of aerosols to penetrate further into the respiratory system increases as the particle decreases below 10 um. Particles below 5 um can be deposited in the alveoli of the air-exchanging portions of the lung. Particle size data submitted to the Panel on commercial aerosol antiperspirants shows that most products produce a significant amount of particles which could deposit in all regions of the respiratory tract.

Particle characteristics alone do not determine the deposition site of aerosols. Individual variations that arise with aging, pathological processes, and nature of breathing (nose versus mouth) will influence the depositon (Ref. 20).

The fate of particles deposited in the respiratory system depend on the location of their impaction and the solubility of the particles (Refs. 21 and 22). Highly soluble particles will dissolve rapidly in the mucus where they deposit. Once dissolved the material will diffuse in the liquid milieu of the body. Many materials can be absorbed from all portions of the respiratory tract.

Insolube material impacting in the oral and nasal cavities will eventually be swallowed and pass through the gastrointestinal tract. When relatively insoluble particles deposit in the upper regions of the lung, they are usually removed by the mucocilliary escalator. The cilia move mucus and particles to the pharynx where they are swallowed or coughed up. In the deeper portions of the lung (alveolar region) where cilia do not exist, insoluble particles may be engulfed by motile alveolar macrophages. These particles may be carried to the ciliated region of the lung for removal or they may remain in the alveolar regions. Phagocytized particles may be absorbed into the interstitium where they can be lodged for long periods or removed to the lymphatic system.

A most important factor in the consideration of the safety of relatively insoluble aerosol particles is the time it takes for the particles to be removed from the lung. This is known as the retention or clearance time. The retention times for relatively insoluble particles deposited in the ciliated portions of the lung are generally on the order of minutes or hours. In contrast, alveolar clearance of these insoluble materials requires a much greater time, with half lives on the order of weeks and months. Where the particles have penetrated the tissue of the pulmonary space, it may take years to clear them (Ref. 23).

Though aluminum salts are soluble in acidic solutions, they will form insoluble aluminum hydroxides as the pH of the solutions is raised, usually above a pH of 5. Since the lung surfactant system is maintained at physiological pH (approximately 7.4), the majority of aluminum antiperspirant material which reaches the lung probably will be converted to water insoluble salts. Aside from the hydroxides, aluminum salts most likely will form insoluble compounds with phosphates and carboxylic acids present in the lung. It is reasonable to believe that aerosol particles of aluminum antiperspirants that impact on the walls of the respiratory tract will behave in the same manner as other insoluble materials.

Recent inhalation studies with aluminum chlorhydrate aerosols provide some indication of the retention times that could be expected. It was shown that the overall clearance time (time it takes for the lung concentration of aluminum to return to normal background burden) of aluminum from the lungs of hamsters was in excess of 2 months after a single exposure to an aerosol of an aluminum chlorhydrate (Ref. 18). As a result of the long retention time, repeated daily exposures bring about accumulation of aluminum compounds in the lung (Ref. 24). The buildup of aluminum in the lungs of animals which are chronically exposed to aerosolized aluminum chlorhydrates was demonstrated in a series of inhalation studies with rats and guinea pigs (Refs. 25 and 26).

The average user of aerosol antiperspirant products would be expected to apply them at least once daily for a significant portion of his/her life. This type of use could very well lead to an accumulation of the insoluble forms of aluminum in the deeper portions of the lung. The actual burden on the lung would depend on the individual's clearance rate of the respirable material and the amount of respirable particles that reach the breathing zone. If the retention time is on the order of months, as was found in animal studies, it might take years of continual use before the steady state concentration in the lung is achieved (Ref. 27).

There are two types of inhalation testing procedures that have been routinely carried out to assess the safety of aerosol antiperspirant products. One is the standard acute Draize Test (Ref. 28), and the other, the Federal Hazardous Substances Act inhalation

tests (16 CFR Part 1500). These acute tests can provide the LC_{50} (the aerosol concentration that is lethal for 50 percent of the test animals) for a particular material, but they do not foretell the safety of a product which is to be used daily on a long-term basis.

In two acute inhalation studies (Refs. 29 and 30) an assessment was made of the no effect/effect toxic level for an aerosolized aluminum chlorhydrate. Hamsters and rabbits were exposed to varying concentrations of particles with aerodynamic sizes of less than 10 um. This assured maximum accessibility of the particles to the lung. Granulomatous lesions of the lung were found at extremely high aerosol concentrations. The no effect level (concentration of aerosol where no adverse pathology could be detected) was found to be at a much greater concentration than would be experienced under normal human use. The most that can be concluded from these studies is that there is essentially little toxicological risk associated with short-term use of aerosol aluminum chlorhydrate products.

The other test procedure is a subchronic 90-day inhalation study. In the subchronic studies submitted (Refs. 2, 6, 8, 31, 32, and 33), the animals were exposed to a variety of aerosol concentrations, usually on a daily basis for the duration of the study. The aerosol concentrations to which the animals were exposed were always significantly greater than a human would be exposed to under normal use. A variety of animals has been used in these studies, including the cynomologus monkey, rat, mouse, hamster, and rabbit. During the course of the study the animals were watched for any abnormal behavior. At the conclusion of the study the animals were sacrificed and a thorough pathological examination, both gross and microscopic, was carried out.

The results of these subchronic studies suggest that the amount of material inhaled under normal use should not be harmful. However, no product data were submitted to demonstrate the safety of long-term use (years).

The Panel spent considerable time deliberating whether the subchronic 90-day inhalation test is an accurate predictor of what might be expected for long-term human use. In a previous report issued by the Panel on aerosolized zirconium-containing antiperspirants, published in the FEDERAL REGISTER of June 5, 1975 (40 FR 24328), the adequacy of the 90-day test period was questioned.

If one is to assess the potential of a material to produce granulomatous or fibrotic lung disease, it is necessary to carry out lifetime animal studies. These diseases, in humans, can take years to develop. The Panel has concluded that long-term safety should be measured for all aerosol antiperspirant materials to ensure their lack of pulmonary disease potential. The disease potential for aerosolized aluminum chlorhydrate compounds has been very well assessed for acute exposures. It has not been measured to the satisfaction of the Panel for long-term repeated exposure. Since there are other dosage forms for applying aluminum chlorhydrates to the axillae which are at least as effective as aerosol systems and have a zero potential pulmonary toxicological risk, the Panel is requiring that a long-term repeated inhalation study be carried out on aerosol formulae of these compounds. (See part III, paragraph D.2. below—Guidelines for tests to be done for aerosolized antiperspirant sprays to be classified as Category I.) All aerosol antiperspirant products have been classified in Category III until such time that the proposed studies are complete. The studies should be completed within 5 years after publication of the final monograph. Interim reports of these safety studies should be filed with FDA.

Further support of the Panel's decision to require long-term inhalation toxicity studies of 2 years' duration is found in two investigations on an aluminum chlorhydrate that are now in progress. In one of these, the animals are being exposed to three concentration levels of the material for 6 hours a day, 5 days a week (Refs. 25 and 26). The aerosolized material in the exposure chambers has an average particle size diameter between 2 and 3 um which assures access of the material to the deeper portions of the lung. After 1 year of exposure, granulomatous conditions were observed in the lungs of all animals sacrificed, even those exposed to the lowest concentration level (0.25 milligram (mg) of aluminum chlorhydrate per cubic meter). The other investigation is assessing the toxicological effects when the lung burden of aluminum is maintained at a steady-state concentration over an extended period of time (Ref. 24). The investigators suggest that the lung aluminum concentration used is approximately 100-fold greater than would be expected for a heavy user of antiperspirant aerosol products containing aluminum chlorhydrates. The lungs of the test animals sacrificed after 9 months exhibited distinct histopathology. Focally prominent accumulations of alveolar macrophages and mild alveolar wall thickening were observed. In both studies the most distinct pathological changes appeared after 6 months of exposure, which is significantly longer than the test period of the subchronic inhalation test.

Although these investigations suggest that aluminum chlorhydrates have a potential for producing pathological alterations of the lung, their designs are such that it is difficult to extrapolate the finding to normal human use of commercial aerosol products. The studies proposed by the Panel should delineate the toxicological risk of antiperspirant aerosol products. There are two approaches which the Panel could use to evaluate this risk. The first approach would maintain a constant lung burden in the animal throughout the duration of the test. The other approach would not maintain a constant lung burden, but would seek to exaggerate expected lung burden which would be obtained under normal human use. This exaggeration would be obtained by a graded series of high-exposure concentrations. The Panel has selected the latter approach for several reasons: (1) It does not require the prior delineation of pharmacokinetic parameters which would be required in the first approach; (2) the method adopted would provide for the toxicological assessment of the varying conditions of exposure that are likely to be experienced; and (3) the dose exaggeration included in this test procedure would ensure that the animal lung burden will exceed that experienced during long-term human use of aerosol antiperspirant ingredients. Among the parameters taken into account in designing the protocol, the Panel considered the normal time of exposure, the presence of formulation excipients, and the particle size distributions produced by the aerosol devices. The long-term repeated inhalation study will include preparations whose inhalation characteristics are comparable to those of the marketed formulations which have the greatest potential for pulmonary deposition. Once these reference formulations have been identified, the respirable aluminum concentrations generated in the breathing zone of human users will be considered the temporary upper limit for marketed aerosolized aluminum salt antiperspirants. At the conclusion of the long-range inhalation study, this upper limit will be adjusted, if necessary, to relate to the highest test level which will have been judged to be a no-effect level (defined as that level which produces no toxicologically significant product-associated pathology in the judgment of pathologists). For all aerosolized aluminum salt antiperspirants, the conformance to these respirable aluminum "upper limit" standards will be measured under the use conditions specified below in the testing guidelines.

The technology now exists for the formulation of suspension-type aerosol antiperspirant systems which have a

small fraction of solid particulates below 10 um (Refs. 34 and 35). Particle size analysis of some antiperspirant aerosols generated with this type of active ingredient indicates that they would have a greatly diminished potential for pulmonary deposition over the typical aerosol materials generally marketed. It now appears feasible to manufacture solid particulate aerosol sprays with 10 percent or less of the particles below 10 um. The Panel recommends that all marketed suspension-type aerosol systems be formulated to emit at least 90 percent of their particles over 10 um in size as obtained from impaction measuring devices.

b. *Problems with safety of propellants.* Pressurized antiperspirant systems make almost exclusive use of chlorofluorocarbon (F.C.) propellants. They are saturated organic compounds which contain both fluorine and chlorine. The ones which are most commonly employed in antiperspirant formulations (Ref. 36) are trichloromonofluoromethane (F.C. 11), dichlorodifluoromethane (F.C. 12), and dichlorotetrafluoroethane (F.C. 114). In the past decade a large number of toxicological studies have been carried out on these compounds. The results of these studies have been summarized in a number of recent publications (Refs. 36, 37, and 38). These compounds have been found to be cardio-toxic, but only when the concentration level of the propellant gas is many times greater than that which would be achieved under normal use of commercial household products. The concentration required to produce serious toxic effects is reached when aerosol product uses are perverted. In the Panel's opinion the scientific data indicate that when aerosol antiperspirants are properly used, the propellants will not pose any undue risk to the user.

However, the Panel recognizes that because of the environmental effects of chlorofluorocarbons, FDA published proposed regulations in the FEDERAL REGISTER of May 13, 1977 (42 FR 24535), which were made final on March 17, 1978 (43 FR 11301) concerning the use of these agents as propellants. These regulations prohibit the use of these agents as propellants in aerosolized products except for specified essential uses.

c. *Problems with the safety of talc in aerosol antiperspirants.* Talc is incorporated into a number of propellant aerosol antiperspirant formulations because of its cosmetic appeal. It serves as a dusting powder in this capacity. The Panel's concern about the presence of talc in these products stems from reports that certain talc constituents will produce toxicological responses when inhaled over extended periods (Refs. 39 and 40).

An open session of the Panel was held on July 9, 1975 to discuss this subject (Ref. 41). Presentations were made by a number of experts on talc chemistry and toxicology. In addition, the Panel received a submission from the Cosmetic, Toiletry and Fragrance Association, Inc., on this matter (Ref. 42).

Talc is a magnesium silicate which is sometimes found to contain two groups of asbestos minerals: the serpentine and amphibole groups. It is these asbestiform minerals which are associated with the toxic effects of talc (Refs. 39 and 40). The analytical procedures now used to detect asbestiform fibers in talc are sensitive to 0.5 percent (Ref. 42). The talc used in antiperspirant products is devoid of any asbestiform fibers when determined by this procedure.

After studying the scientific literature and the data presented at the open session, the Panel concluded that there is virtually no risk from asbestos in aerosolized talc in the amounts found in antiperspirant products if the material is determined to be free of asbestiform fibers by the Cosmetic, Toiletry and Fragrance Association, Inc., procedure (Ref. 42). This analytical procedure should be used until more sensitive techniques are available. It is important that further work be undertaken to set limits for asbestiform fibers and to reduce the limit of detection to as low as possible from the now accepted 0.5 percent.

The Panel did not consider the safety of talc in products other than antiperspirants.

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H. EFFECTIVENESS OF ANTIPERSPIRANTS

1. *General discussion.* The need to assure the effectiveness of OTC drugs has been underscored by recent Congressional decisions and is a major reason for the present OTC review. The average person expects the OTC drugs he/she buys to be safe. He/she purchases them for the drug manufacturers' promises of effectiveness and usually takes their safety for granted. The manufacturers' responsibility clearly does not end once its product is safe; its product also should do what the manufacturer claims it will do. This dual performance of OTC drugs is emphasized in the FDA charge to the Panel that the benefit to risk ratio of antiperspirant drug products be considered.

Americans spend more than ½ billion dollars annually on products claiming to reduce axillary odor and perspiration. These include a wide variety of antiperspirants, deodorants, and deodorant soaps. It is probable that relatively few consumers give much thought to how these products accomplish their purpose or what their limitations may be. It appears that many people are unaware of the distinction between antiperspirants and deodorants and often use antiperspirants expecting deodorant action or vice versa (Ref. 1).

The Panel has been made aware of the confusion about the use of these products and their limitations (Ref. 2). It feels that it is in the public interest to discuss these issues fully so that the individual's decision to use them may be an informed one.

Axillary odor and perspiration are closely interrelated phenomena. (See Part II, paragraph E. above—Axillary Odor.) Because of the confusion about the use and purpose of antiperspirant-deodorant products, it is helpful to distinguish between the purposes they are intended to serve.

OTC antiperspirants are designed primarily to reduce underarm (axillary) wetness. They are classified legally as drugs because their mode of action affects a body function, namely, eccrine sweating. Deodorants are designed to reduce axillary odor. Since this is considered a nontherapeutic purpose and a function of the body is not considered to be altered, they are classified as cosmetics. Many OTC antiperspirant drug products claim to perform both functions and indeed may do so. Some deodorant cosmetics may also reduce wetness, but may not carry a label claim to this effect.

The consumer who desires to know whether a given product acts as an antiperspirant, as a deodorant, or as both is not helped by these legal classifications or by current labeling practices. He/she really should know what specific active ingredients are present and be knowledgeable about their probable effects.

2. *Deodorant effectiveness of antiperspirants.* Laboratory studies indicate that both eccrine and apocrine sweat are sterile and odorless at the time of secretions (Ref. 2). The odor is produced later through the action of bacteria on primarily the apocrine sweat, which is rich in organic material and is an ideal substrate for bacterial growth. The far more abundant eccrine sweat, the source of axillary wetness, is a highly dilute water solution and has been shown to be much less important as a source of axillary odor (Ref. 3). However, the moisture from eccrine glands probably promotes odor production indirectly in two important ways. The small amount of sticky, oily material from the axillary apocrine glands is dispersed over a wider surface. Secondly, the moisture in the warm axillary vault completes an ideal environment for the rapid growth and proliferation of the resident bacteria feeding on this organic material. Axillary hair also has been found to promote the development of odor (Ref. 3). It is thought that axillary hair acts as a collecting site for apocrine sweat and increases the surface area available for bacterial proliferation.

These findings several obvious ways to reduce or control axillary odor: (a) Reduce apocrine sweating in the axillae; (b) remove the secretions from both types of sweat gland as quickly as practicable; (c) impede bacterial growth.

Of these, there can be little doubt that adequate personal hygiene including regular, effective bathing is the primary means of controlling both bacterial growth on skin and body odor. The effect of shaving the axillae is also quite helpful. In women who shave regularly there is a markedly reduced axillary odor (Ref. 3). Unlike eccrine glands, the apocrine glands are indifferent to ordinary thermal stimuli, but respond to emotional stress such as fear, anger, and strong pain and also to mechanical stimulation such as a mild stroking of the skin. Although the quantity of apocrine sweat produced is very small, there is no known OTC product that can eliminate it or indeed that has any apocrine antiperspirant effect.

Antiperspirant which are designed for the reduction of eccrine sweating might conceivably be capable of reducing odor by drying the axilla and creating arid and less favorable conditions for bacterial growth. However, commercially available OTC antiperspirants do not provide substantially more than a 20 to 40 percent reduction in axillary wetness. It is very doubtful that this limited reduction in wetness could in most individuals result in appreciable odor inhibition. However, some of the active ingredients in current OTC antiperspirants (in particular aluminum chlorhydrates and aluminum chloride) possess a degree of anitbacterial activity and may work as deodorants (Ref. 4). (See part II, paragraph E.4. above—Mechanisms of the deodorant effects of antiperspirants.)

The application of a deodorant is not substitute for cleansing, and deodorant use should follow adequate bathing. Some deodorants do not contain ingredients which affect bacterial growth. They depend entirely on odor substitution; that is, their perfume temporarily masks a disagreeable odor with a more pleasant one. Other deodorant products contain antimicrobial chemicals which are intended to reduce the microbial flora of the skin surface (e.g., deodorant soaps).

Deodorancy is considered a cosmetic claim and is a concern of the Panel only so far as labeling claims of deodorancy appear on antiperspirant products. Since these types of data were not requested in the call for data, full submissions to substantiate deodorant claims were not made.

From the data submitted on deodorancy, the Panel is satisfied that the submitted compounds of aluminum and zirconium that are effective as antiperspirants also appear to be effective as deodorants. This conclusion is based on data submitted by industry on "sniff tests" carried out with a representative range of products tested in the axilla (Refs. 5 through 17). Since the deodorancy is largely dependent on suppression of bacterial growth, washing the axilla to remove apocrine and eccrine secretion and desquamated epithelial debris is essential to achieving optimal deodorancy effectiveness. The Panel chooses not to be concerned with comparative deodorancy claims.

If new antiperspirant products or ingredients are reviewed for deodorancy, data on suppression of bacteria in the axilla should be a part of the data considered and should be correlated with assessments of odor reduction.

3. *Antiperspirant effectiveness of antiperspirants.* Eccrine sweating is a perfectly normal and often an essential part of the body's thermoregulatory system. Eccrine sweat glands are distributed in great numbers over the entire body surface (over 3 million on the average adult). Normally, these glands become active under conditions of thermal stress, i.e., (a) when the environmental temperature becomes high, (b) when internal heat is produced which must be eliminated (as in muscular exercise), and (c) when other mechanisms of heat loss such as air convection or thermal radiation are prevented. The cooling of the skin by

the evaporation of this moisture (and thereby cooling the circulating blood in the skin's blood vessels) is often the only effective way of maintaining a proper constant body temperature.

The axillary sweat glands and also those of the palms and soles do not appear to be essential to the proper functioning of this thermoregulatory system. The palms and soles in most individuals react only weakly or not at all to thermal stimulation (Refs. 18 and 19), and the sweat from the axillae usually cannot readily evaporate. Perceptible underarm wetness is the result of two processes—the amount of sweat produced and the rate of evaporation.

In certain specific regions of the body (palms, soles, axillae, and forehead) eccrine glands respond to emotional or sensory stimulation such as the pain produced by touching a hot object, and in some individuals the gustatory stimulation provided by eating spicy food. In contrast to thermal sweating, which begins only after a latent period, emotional or sensory sweating commences immediately and ceases immediately on withdrawal of the stimulus.

Available OTC antiperspirants are capable of reducing underarm wetness to some degree. The range of effectiveness (average percent sweat reduction) of OTC antiperspirants in laboratory hotroom tests submitted to the Panel is given below:

RANGE OF AVERAGE PERCENT SWEAT REDUCTION OF OTC ANTIPERSPIRANTS

Dosage form	Average percent reduction
Aerosols	20-33
Creams	35-47
Roll-ons	14-70
Lotions	38-62
Liquids	15-54
Sticks	35-40

No OTC antiperspirant product can eliminate wetness completely, but the partial reduction that can be achieved has been shown to be 20 to 40 percent in most tests.

The mechanism of antiperspirant action has not yet been established. It is possible that different active ingredients act in different ways. (See part II. paragraph F. above—Pharmacology of Antiperspirants.) The Panel has found no evidence that these products are harmful to the sweat glands. Completely normal axillary eccrine sweating is resumed usually within a week after antiperspirant use is discontinued.

In summary, the eccrine sweat glands of the axillae (and the forehead) are unique in that they can be stimulated both by thermal and emotional stimuli. Sweating in the axillae is not essential to the thermoregulatory function, and the onset, amount, and duration of sweating are highly variable factors dependent on the type of stimulus, its intensity, and the pattern of individual response. Axillary eccrine sweat can be reduced but not eliminated by the use of OTC antiperspirants. The Panel did not receive sufficient data to support a claim of activity for these OTC products and ingredients on body parts other than the axillae. Therefore, effectiveness in the axillae should not be extrapolated to signify effectiveness elsewhere on the body.

The effectiveness (percent reduction values) of most aerosolized OTC antiperspirant products containing an aluminum chlorhydrate, the most widely used active ingredient, falls between 20 and 33 percent. Variability in individual response, test protocols, data evaluation, test subject selection, method of administration, and dosage form and differences in formulation are some of the factors which contribute to this broad range of effectiveness. A summary of pooled percentage reduction data from submissions to the Panel is given in the table above. These include a variety of OTC antiperspirants containing different active ingredients. These data attest in particular to the very large role that variations in individual response play in antiperspirant effectiveness. One general conclusion which appears valid is that aerosolized versions of antiperspirants are generally not as effective as the other dosage forms. It is important to recognize that these numbers are averages from tests and that individual responses are far more variable.

The effectiveness range for aerosolized aluminum chlorhydrates can be restated by saying that an individual test subject using such an antiperspirant product may be expected to sweat with 67 to 80 percent efficiency rather than his normal 100 percent. Drawing upon the analogy of a "leaky raincoat," critics of currently available antiperspirants challenge the effectiveness of a formula that permits up to 80 percent of the perspiration to go unchecked.

The CTFA has argued against this view in its submission to the Panel (Ref. 20). This group states that the purpose of an antiperspirant is to reduce sweating below a critical level where "* * * frank wetness perceivable to the consumer begins to develop" and not necessarily totally to inhibit sweating. They contend that an antiperspirant effective even at the 20 percent level may well achieve this result and thereby prove beneficial to the consumer.

The Panel agrees in principle that total inhibition of axillary sweating is probably neither necessary nor desirable for an effective antiperspirant. The perception of a beneficial effect by an individual using an antiperspirant under normal everyday conditions is the desirable goal.

Antiperspirant manufacturers have universally adopted objective gravimetric tests for antiperspirant effectiveness evaluations. These tests show that currently marketed antiperspirants are generally limited in the pharmacologic ability to reduce axillary sweating.

4. *Effectiveness testing of antiperspirants*—a. *General discussions.* Several different approaches have been used to estimate the extent of perspiration on human skin. The simplest of these have been visual, such as Minor's or Wada's method and its modifications (Refs. 21 through 24). All these techniques enhance the visibility of sweat droplets on the skin by their colorimetric reaction with various dyes. In general, the visual methods are only semiquantitative, but are simple and suitable for screening purposes or for studies aimed at determining individual sweat pore patterns. Another type of method permits accurate measurements of sweat output from small and precisely defined areas of skin (Refs. 25, 26, and 27). These methods usually involve a cup glued to the skin through which dry air or gas is passed, carrying any moisture to a suitable sensing device. The methods are quantitative and often permit measurement truly reflective of the pulsatile nature of moderate sweating. But since these methods require complex equipment and considerable technical monitoring, they are not readily adaptable to a large number of subjects (Ref. 28). Other techniques using tiny micropipettes permit the entire sweat production from individual glands to be measured and analyzed (Refs. 29, 30, and 31). These measurements have provided the evidence for the presence of reabsorption phenomena in the sweat gland (Ref. 31) and are used routinely as diagnostic aids for the detection of fibrocystic disease.

b. *Gravimetric test.* The method used by most testing laboratories is based on gravimetric (weight) determinations of a constant fraction of the total sweat production from the axilla over a moderately long time interval (Refs. 32, 33, and 34). The test antiperspirant is used in one axilla of each subject, and the other is left as a control. Absorbent pads of known weight are placed in each axilla and kept in position during the test period. After this period the pads are removed, reweighted, and the reduction in sweat output of the treated axilla computed. This general procedure, with a few variants, is universally used by industry to test the effectiveness of marketed antiperspirants. The method is

adaptable to large numbers of human subjects, is fairly rapid, and requires a minimum of special equipment. It is claimed that this method adequately represents the real-life situation, produces a minimum of interference with the normal physiological response of the subjects, and produces quantitative results suitable for conversion into a meaningful percent sweat reduction figure (Refs. 26 and 33).

(1) *"Hotroom" vs. ambient conditions.* One of the major variants in the way this test has commonly been conducted is the nature, duration, and intensity of the sweat-provoking stimulus given. In the more widely used hotroom procedure, test subjects are placed in controlled temperature rooms maintained at 100±2° F and at approximately 35 percent relative humidity (Refs. 28, 35, and 36). The use of controlled hotroom conditions rather than ambient conditions is predicated on the belief that a controlled environment with the test subjects under constant supervision offers the best opportunity for accurate and reproducible estimates of percent sweat reduction. Since thermal stimulation of sweating requires a latent period before a constant sweat rate is established, the usual procedure is to allow a 40-minute warmup period after hotroom entry before beginning the actual sweat collection. Sweat rate data obtained during one or two successive 20-minute collection periods are usually used for evaluation. It is claimed that testing after the warmup period eliminates extreme variations in individual sweating patterns and provides more reproducible data for a more precise evaluation of antiperspirant activity (Ref. 28). The warmup period also provides time for an individual's emotional adjustment to the conditions of testing. Because of this and because the test subjects used have often been through the procedure previously, it is likely that the sweat stimulus is largely, if not entirely, thermal. The Panel cannot find any evidence to support the hypothesis that 100° F hotroom conditions provoke nonthermal sweating (Ref. 36), although it is clear that the thermal stimulus provided by hotroom conditions is more intense than that likely to be experienced by most individuals in normal activity.

The normal activity or ambient method does not utilize controlled temperature conditions or constant supervision of the subjects. Test subjects are fitted with absorbent pads designed to retain absorbed moisture for a period of several hours. They are then free to pursue normal activities during the test period, usually 3 to 5 hours (Ref. 36). At the end of this period the pads are removed and weighed again and the determination of effectiveness made in the standard way. The results are claimed to give reproducible percent reductions, comparable to the hotroom methods, and in some cases at least, capable of better discrimination between similar antiperspirant formulations (Ref. 36). In this procedure the sweat stimuli are likely to be of lower intensity overall and could be of both emotional and thermal origin. These conditions are closer to those expected in the normal use of antiperspirants than are hotroom conditions, and this is the principal advantage claimed for the method.

(2) *Data evaluation methods.* Different computational procedures are used to convert antiperspirant data to a percent reduction figure and these methods can give different estimates of antiperspirant effectiveness from the same set of data (Ref. 37). These different procedures appear to arise largely from two areas of disagreement: The nature of the statistical distribution of the responses of subjects to antiperspirants, and the proper method of controlling the "handedness" or asymmetry of the antiperspirant response.

There is evidence that axillary sweating is asymmetric (Refs. 28, 32, and 38) and correlated with locomotor dominance. Crossed locomotor and sudomotor innervation has been found in the forearm (Ref. 39) and asymmetric sweating on other body areas has also been reported (Ref. 40). Similar hemihidrotic effects due to posture or applied pressure were noted by Kuno (Ref. 18) and are factors that have to be considered in designing and conducting a test protocal (Ref. 38).

Majors and Wild (Ref. 35) and others attempt to control for the asymmetry in axillary sweating by adjusting the test data with the use of predetermined ratios. In effect, the test and pretest ratios of the amount of sweat from opposite axillae are compared instead of the absolute milligram amounts. Their basic formula for the calculation of percent sweat reduction is:

$$\text{Percent sweat reduction} = 1 - \frac{\frac{T}{C}\ \text{Test}}{\frac{T}{C}\ \text{Pretest}} \times 100$$

where T is the milligrams of sweat collected from the test axilla (treated or to be treated) and C is that collected from the control or untreated axilla. This calculation assumes that the radio of sweat output from opposite axillae is constant and independent of sweat rate or the time of collection. Majors and Wild also report that the response of test subjects to antiperspirants follows an essentially normal distribution, thus justifying the use of arithmetic means of estimating the most probable value of the parent distribution.

Wooding and Finklestein (Ref. 37) contend that the responses of test subjects to antiperspirants are positively skewed and therefore require log-transformation before parametric statistical techniques can be applied. This procedure results in using geometric rather than arithmetic means and usually increases the apparent percent sweat reduction values. These authors also contend that the use of pretest ratios is, at best, unnecessary and, at worst, can introduce a serious bias into estimates of percent sweat reduction. They suggest that such ratios are not found to be strictly constant and that asymmetry effects are best controlled by the use of a suitable experimental design (Ref. 37).

Comparison of results of analysis of antiperspirant data using these two approaches show differences of from 1 to 6 percent in estimates of percent sweat reduction (Ref. 37).

c. *Minimum requirements for antiperspirant effectiveness.* The definition of drug effectiveness provided by FDA regulations states in part that OTC drugs "* * * will provide clinically significant relief of the type claimed" (21 CFR 330.10(a)(4)(ii)). Furthermore, to establish effectiveness within a reasonable expectation, acceptable evidence which can withstand scientific scrutiny must be provided. The Panel is specifically instructed by its charge and by FDA regulations to exclude from consideration random experience and reports lacking the details which permit scientific evaluation.

The commonly used gravimetric tests of antiperspirant effectiveness reveal a wide range and a relatively low order of absolute effectiveness. Can tests of this kind provide a basis of evidence to establish a reasonable expectation for clinically significant relief of the type claimed? The Panel believes that they can if they are properly conducted and if appropriate standards governing the significance of the test data are established.

Gravimetric tests of antiperspirant effectiveness are not evaluations of clinical effectiveness. These tests simply measure the amount of sweat reduction under controlled conditions. In such a test, a product could achieve a statistically significant reduction in perspiration of only a few percent.

Such a low level of gravimetrically detected antiperspirant effect, though real, could be of trivial significance and would not ordinarily be perceived by the average user. To base a test for antiperspirant effectiveness entirely on the mere detection of a pharmacological effect of possibly trivial significance could not be said to provide the user with a reasonable expectation of "* * * clinically significant relief of the type claimed."

The basic drug claim made for antiperspirants is a reduction in underarm wetness. The Panel maintains that this claim contains the implied representation that the reduction in wetness is not trivial and will be perceptible to the user. That a perceptible antiperspirant benefit will accrue to the user of these products is often made explicit on the label in the form of statements of cosmetic puffery and in the advertising media. On this basis the Panel has determined that antiperspirant products, in order to be considered effective, attain or exceed a specific minimum level of effectiveness in gravimetric tests and that this level be such as to provide a reasonable expectation that an antiperspirant effect will be perceptible to the user under ordinary conditions of use.

In an effort to establish this minimum level of gravimetric effectiveness, the Panel requested information from a major independent test laboratory with 22 years' experience in the evaluation of OTC antiperspirant effectiveness (Ref. 41). The results on the correlation between hotroom gravimetric tests and user perception tests of antiperspirant effectiveness were presented at the Antiperspirant Panel meeting of August 1975.

The results indicated that the hotroom effectiveness of an antiperspirant required for a perceptible subjective effect is approximately a sweat reduction equal to 20 percent. Or stated in another way: A hotroom sweat reduction of at least 20 percent is required before an individual, who notices his own underarm perspiration, is able to locate correctly at least half the time, the underarm treated with antiperspirant. The data also suggested that individuals who exhibit higher measured effectiveness in hotroom tests experience a greater subjective antiperspirant effect.

The Panel considers that these data validate the use of a properly conducted hotroom test for antiperspirant effectiveness and that a 20 percent reduction in sweating achieved under hotroom conditions is sufficient to justify the use of the label claim "antiperspirant" as long as it is accompanied by a statement explaining the level of effectiveness that can be expected. (See Part III. paragraph B.1. below—Category I Labeling.)

Since a product with a sweat reduction of 20 percent promises only a barely perceptible antiperspirant effect, antiperspirants that achieve less than 20 percent effectiveness in hotroom tests are probably worthless in terms of consumer benefit. Therefore, the Panel has proposed a statistical criterion that provides a reasonable assurance that only antiperspirant products that are likely to give a 20 percent sweat reduction in at least half of the subjects will be marketed. The Panel recognizes that the statistical criterion is more stringent than those conventionally used, but it believes this is necessary to insure that truly ineffective products, with no perceptible user benefit, are not marketed.

The Panel believes that both the ambient method and the hotroom method are generally acceptable and can provide the necessary objective test data. The minimum standard of antiperspirant effectiveness developed above in connection with hotroom data applies equally well to gravimetric data using the ambient method.

d. *Factors affecting antiperspirant effectiveness evaluation.* In its review of the scientific literature and industrial submissions, the Panel has become aware of the many factors which can alter the effectiveness of OTC antiperspirants. Additional considerations determine the accuracy, dependability, and predictive value of tests used to assay antiperspirant effectiveness. The following factors were specifically considered by the Panel in its determination of the methods and data evaluation to be followed in the proposed effectiveness test:

(1) Currently marketed OTC antiperspirants appear incapable of totally inhibiting axillary sweating except, possibly, in rare, isolated cases. Any benefit to the average user therefore must be measured in terms of reduction in sweating rather than in terms of total sweat inhibition.

(2) On the basis of the best evidence currently available, antiperspirants which in hotroom tests give percent sweat reductions of approximately 20 percent or less exert no perceptible antiperspirant effect on the average user (Ref. 41).

(3) Minor variations in formulation can critically affect a product's antiperspirant activity (Ref. 35). The fact that a known active ingredient is present in proper concentration cannot, per se, be taken as a guarantee of effectiveness of the finished product. Higher concentrations of known active ingredients in poorly formulated products are often less effective than lower concentrations of active ingredients in well formulated products.

(4) Individuals are extremely varied in their response to antiperspirant materials. Some individuals do not respond at all to certain active antiperspirant formulations, but do respond to others. Even properspirant (increase in sweating) effects are observed when antiperspirants are used in some individuals (Refs. 35, 41, and 42). There are sizable variations in determinations in average percent sweat reduction values with small numbers of test subjects. To some extent this can be overcome by using larger numbers of test subjects, 30 or more (Refs. 35 and 41).

(5) Axillary sweating is affected by unilateral pressure applied to the body (Ref. 38). Leaning against a chair, crossing the legs, or using a bulky collection device in one axilla can all produce unilateral effects on axillary sweating. This effect can be controlled by proper management of the subjects and design of the test.

(6) Axillary sweating during an individual's normal activity is intermittent and is responsive to emotional stress, as well as thermal stimuli. Emotional responses are potentiated in a warm environment, and a greater amount of sweat is secreted (Ref. 38).

(7) No clear correlation between sweating rate and the effectiveness of antiperspirant materials has been established (Ref. 35). But it remains possible that effectiveness is modified by sweat rate (Ref. 38). Emotional stimuli are known to generate more rapid sweating than thermal stimuli (Ref. 43).

(8) Conventional gravimetric effectiveness tests do not control for race, sex, conditioning, acclimatization or season. All these factors are known to affect the responsiveness of eccrine glands (Ref. 44). Only the influence of sex difference seems to have been determined, and even though men are known to sweat more than women in response to a standard stimulus, no significant differences in their response to antiperspirants were reported (Ref. 34).

(9) Axillary sweating does not appear to be as readily inhibited by at least some topical antiperspirant materials as sweating on other body sites (Ref. 4). Test results that are to be used in substantiation of the effectiveness of axillary antiperspirants must originate from procedures using axillary test sites.

(10) Currently marketed antiperspirants are normally not effective immediately after application to the skin. Some appear to become effective after a few hours (Ref. 38); others require more time and repeated applications to achieve maximum effectiveness (Refs. 34 and 35).

(11) The mechanism of action of topical antiperspirants is not known. It cannot be assumed that the mechanisms of action of different active in-

gredients are identical. Data on the effect of sex difference, sweat rate, and other factors that have been obtained with unidentified antiperspirant materials or specific active ingredients cannot be generalized to apply to all antiperspirant materials.

(12) Differences between the two principal statistical methods for evaluating effectiveness do not appear to lead to serious differences in percent sweat reduction values (Refs. 28 and 35). The Panel is more concerned with the undisputed low overall level of measured effectiveness revealed by current tests and the predictive value of such tests for the population-at-large.

e. *Panel statements concerning effectiveness testing.* During its inquiries into the effectiveness of antiperspirant products, the Panel discussed two things that subsequently resulted in a pronounced difference of opinion among the Panel members:

(1) Although formulated with the same active ingredients, different antiperspirant products, especially those prepared for aerosol application, may vary widely in the percentage reduction in perspiration they produce (Ref. 35 and 41).

(2) Marketed antiperspirant products have been shown under test conditions to produce a reduction in perspiration that varies roughly from 20 percent to nearly 50 percent. At the same time, the Panel ascertained that the lower figure of 20 percent reduction in sweating is the lowest level at which most users would be subjectively aware that there was any antiperspirant effect at all from the product they were using. (Remember, however, that users apparently buy these products for both antiperspirant and deodorant effects, and there is not necessarily a correlation between the degree of effectiveness of these two actions).

Faced with this information, the Panel disagreed on what it should recommend to insure that marketed OTC antiperspirant products are effective.

The majority of the Panel (four voting members) felt that the facts warranted a requirement that even though an antiperspirant product was formulated with Category I (safe and effective) ingredients it should, in addition, be required to be tested as a product, to demonstrate proof of adequate effectiveness.

A minority of the Panel (two voting members) felt that even though antiperspirant products might vary in effectiveness, and might, in fact, be less effective than the recommended minimum levels, they should be allowed to remain on sale provided they were made with Category I ingredients.

f. *Antiperspirant effectiveness qualification test*—(1) *General discussion.* Because minor variations in formulation can alter the actual effectiveness of the product, the Panel has recommended that the effectiveness test be performed on the final product formulation regardless of the tests that may be carried out on the active ingredient in other forms or vehicles. The Panel recommends that a standard protocol be adopted.

It is a fact well known to the antiperspirant industry and testing laboratories that excipient ingredients added in the formulation of an antiperspirant product may seriously impede or even totally destroy the effectiveness of an otherwise active antiperspirant ingredient. This is not a rare circumstance, but occurs frequently with all forms of antiperspirant products. It occurs when special substances are added to aerosol formulations to prevent clogging of the spray nozzle. It occurs when emollients are added to enhance the cosmetic acceptability of powders, sticks, and roll-ons. And it occurs with aluminum chloride salt ingredients which are often buffered in formulations to reduce irritancy.

The effectiveness testing of antiperspirants in final product form has been the means by which manufacturers of these products monitor, assure, and improve the effectiveness of their products. Many of these products have been marketed in several versions which differ only with respect to the color and perfume ingredients which are present in very low concentrations and which do not materially alter the physical and chemical properties of the formula. They are not considered to have any material effect on antiperspirant activity. This can be contrasted to the interferences which have been reported to arise from the influence of other vehicle components. While such interferences are occasionally traceable to the presence of a particular excipient, they are generally not understood or predictable.

Product testing is the only way generally recognized by makers of antiperspirants to assure that the active ingredients remain active in the final product form available to the consumer.

Therefore, since antiperspirant active ingredients can and often do become ineffective when formulated, and since the mechanism of topically induced antiperspirancy is now unknown, and the effect of formulation on the final effectivensss of the purported active ingredients cannot be predicted, the Panel recommends that the final formulation of OTC antiperspirants be tested for effectiveness in the manner described herein and that the product must exceed the minimal standards set by the proposed effectiveness test or an acceptable equivalent test.

To qualify as effective in finished product form, an antiperspirant must meet or exceed the criteria established by the following test procedures and definitions.

This qualification requirement applies to all formulae except those variants which differ from a qualified formula only with respect to color and/or perfume ingredients.

A gravimetric test measuring the amount of axillary perspiration under either controlled hotroom or ambient conditions will be used. Multiple, independent testing is permitted provided that the evaluation of effectiveness is based on preset proper statistical analysis for a combined set of such experiments.

(2) *Protocol.* The test subjects will be required to abstain from the use of all antiperspirant materials for at least 1 week prior to pretreatment or treatment collections. Antiperspirants can have residual activity; a week or longer has been deemed sufficient for a washout period. The test subjects must be sufficiently representative in that the differences between the highest and lowest rates of sweating amongst the test subjects must exceed 600 milligrams/20 minutes/axilla.

When a large number of subjects were subjected to the hotroom conditions described below, differences in perspiration rate in excess of 600 milligrams/20 minutes/axilla were found. Information on the sweating rate will be obtained during pretreatment collections or by collections taken from the control axilla during treatment.

There are two generally accepted procedures for conducting antiperspirant tests. These are referred to as the hotroom and ambient condition tests. In the hotroom test the subjects are placed in a controlled environment which thermally stresses them to perspire. It has been found that temperatures around 100° F and humidities in excess of 35 percent will elicit sufficient axillary sweat from the subjects in reasonable lengths of time so that gravimetric measurements can be made of the axillary perspiration rate. The perspiration is usually collected on an absorbent material for a period of 10 to 30 minutes and weighed (Ref. 45). Care must be taken to insure that all factors which are known to influence axillary sweating and in particular those known to have a unilateral effect on sweating rate are properly controlled (Refs. 20, 33, 38, and 41). Aside from temperature and humidity, air movement and mental or emotional stimulation can influence sweating rate. There are some less well defined variables, such as the position of the trunk and extremities, which will produce unilateral effects (Refs. 18 and 38).

Ambient tests permit an assessment of antiperspirant activity of a formulation under normal use conditions. In these tests the subjects, after having the materials applied to the axillae, are allowed to go about their normal daily routines. Absorbent pads are placed in their axillae to collect perspiration. The pads usually collect sufficient perspiration for a gravimetric determination in 3 to 5 hours (Ref. 36).

A treatment will consist of the application of the product under evaluation to one axilla of a subject and the control formulation to the other axilla. The quantity of each formulation applied to all the test subjects must reflect the amount that a typical person would apply under normal use conditions. Half of the subjects will be randomly assigned to receive the test product under the left (L) axilla, leaving the other group of subjects to be assigned oppositely. If a pretreatment is desired to establish a control ratio of the left to right axillary sweating rate, it will consist of the application of the control product to both axillae. The control product will consist of a formulation devoid of the active ingredient and will be applied in the same manner as the product being evaluated. All treatment applications will be made once daily.

It is important that the number of treatments preceding the collections of axillary perspiration for evaluation be recorded. At least one daily treatment should be carried out before the test.

(3) *Data treatment.* Sweat reduction is defined for each subject by the formula:

$$\text{Percent sweat reduction} = \frac{C - T}{C} \times 100$$

where C is the raw milligram weight measure of moisture from the control axilla and T is the corresponding quantity for the test axilla. When pretreatment ratios are used appropriate modifications of this formula are acceptable.

A statistical analysis of the percent sweat reduction values will be conducted by a binomial test. This test will demonstrate that with high probability at least 50 percent of the target population will obtain a sweat reduction of at least 20 percent. In statistical terminology:

$H_0 = P00.5$

$H_A = P00.5$ ($=0.05$, one sided),

where H_0 is the null hypothesis, P is the probability, H_A is the alternative hypotheses and is the predetermined arbitrary level of significance.

This test reduces to the simple procedure of counting the number of subjects with a sweat reduction equal or greater than 20 percent and comparing it with tabulated values. If this number equals or exceeds the tabulated value for a given sample size, the product qualifies for effectiveness. For example, binomial statistics requires the following:

Total number of test subjects	Minimum number of subjects required to have at least a 20 percent sweat reduction
20	15
25	18
30	20
100	58

g. *Minority opinion.* Two members of the Panel disagreed with the majority of the Panel's recommendation that all antiperspirant formulated products, as well as ingredients, be subjected to specified testing for effectiveness. It was the feeling of these two members that product-by-product effectiveness testing would not be necessary for the following reasons:

(1) Although the Panel was told that variations in the formulation of antiperspirant products, all made with comparable concentrations of the same agents (mostly aluminum chlorhydrates), would produce differing amounts of antiperspirant effectiveness, the fact that so many different formulations of aluminum chlorhydrates seemed adequately effective suggested that Category I ingredients in proper amount could ordinarily be put into an effective product without any special compounding art.

(2) Despite the charge to the Panel to determine that all OTC drug products be safe and effective for their labeled indications, we feel that it is permissible, and even wise, to allow the possibility that some formulated antiperspirant products will, in fact, turn out not to be adequately effective, as defined. Even if a product were compounded in such a way as to make it less than adequately effective, no real harm would be done. The user should be able to perceive the difference, the ineffective product would be discarded, or not repurchased, and the purchaser of such a product would have suffered only a modest inconvenience and the loss of a very small purchase price.

(3) Eliminating the need for product-by-product effectiveness testing would reduce the complexity of testing new formulations. The resulting cost savings would be expected to be reflected in the market price of the products.

(4) Even more importantly, the requirement for product-by-product effectiveness evaluation would substantially increase the regulatory task of FDA. The OTC review process was designed as an ingredient rather than a product review in order to allow a relatively manageable review of the vast number of OTC products. While the review process as implemented is flexible enough to permit product-by-product review in certain compelling situations, if utilized throughout the review process it would vastly complicate this long-needed review of the OTC arena. Such a complication should be avoided whenever possible.

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I. COMBINATION POLICY.

The combination drug policy for OTC products is set forth in 21 CFR 330.10(a)(4)(iv):

An OTC drug may combine two or more safe and effective active ingredients and may be generally recoginzed as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

After reviewing the labels of the submitted antiperspirant products, it appeared to the Panel that many products contained combinations of two or more antiperspirant active ingredients. However, in an attempt to clarify the naming of the various antiperspirant ingredients (Ref. 1), the Panel was informed that these products were not combinations in the true meaning of the word. Rather, the chemistry involved in the combining of the labeled ingredients in the final product resulted in one of the identifiable ingredients listed by the Panel in the nomenclature section of the document. (See part I. paragraph B., in the table above—Comparison of Submitted Names and Adopted Names for Antiperspirant Active Ingredients.) The Panel is not aware of any product which contains more than one identifiable active antiperspirant ingredient.

One submitted product contained aluminum sulfate and sodium aluminum lactate. The Panel has concluded elsewhere in this document that the presence of sodium aluminum lactate is to act as a corrective agent to counteract the irritating nature of the aluminum sulfate, rather than to act as an active ingredient. (See part III. paragraph B.1.d. below—Buffered aluminum sulfate.)

The Panel recognizes the possibility of combining a Category I antiperspirant with Category I ingredients from other OTC monographs. For example, one submission to the Panel contained information on a product no longer marketed containing an antiperspirant ingredient and an antibacterial ingredient. The presence of the antibacterial in this product was for a deodorant effect rather than an antiperspirant effect. However, the Panel has concluded elsewhere in this document not to review deodorant claims since they are deemed cosmetic claims. (See part II. paragraph E. above—Auxillary Odor.)

The Panel was made aware of other products containing both antiperspirant and antifungal ingredients to be used in the treatment of athlete's foot. While the Panel has evaluated the antiperspirant ingredients in these combinations for their antiperspirant safety and effectiveness, it defers to the OTC Antimicrobial II Panel any evaluation of the usefulness of such a combination in the treatment of athlete's foot.

In summary, since the Panel has no data for actual combinations of antiperspirant active ingredients, these combinations are Category II. In addition, except for the antiperspirant/antifungal combinations which have been deferred to another OTC Panel for evaluation, combinations of antiperspirant active ingredients with active ingredients from other OTC monographs are also Category II since the Panel has no data on such combinations.

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III. ANTIPERSPIRANT AGENTS

A. GENERAL DISCUSSION

Most submissions to the Panel described formulations made with only a few common ingredients. Included with these submissions were descriptions of safety testing, hotroom effectiveness testing, and marketing experience.

Because most manufacturers use essentially the same ingredients, this meant that the Panel was presented with a truly massive amount of documentation about the leading antiperspirant ingredients, most notably the aluminum, chlorhydrates.

Despite the very large amount of information reviewed by the Panel about the safety and effectiveness of the aluminum chlorhydrates it was decided to categorize as Category I only products made for direct application to the skin. The decision to require added testing for aerosol products reflects the fact that damage to the lung, by occurring more insidiously, carries a greater potential for serious illness than damage to the skin.

B. CATEGORIZATION OF DATA

1. *Category I conditions under which antiperspirants are generally recognized as safe and effective and not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the FEDERAL REGISTER.

CATEGORY I ACTIVE INGREDIENTS

The Panel has classified the following antiperspirant active ingredients in topical nonaerosol dosage formulations as generally recognized as safe and effective and not misbranded:

Aluminum chlorhydrates:
Aluminum chlorohydrate
Aluminum dichlorohydrate

Aluminum sesquichlorohydrate
Aluminum chlorohydrex PG
Aluminum sesquichlorohydrex PG
Aluminum dichlorohydrex PG
Aluminum chlorohydrex PEG
Aluminum sesquichlorohydrex PEG
Aluminum dichlorohydrex PEG
Aluminum zirconium chlorhydrates:
Aluminum zirconium trichlorohydrate
Aluminum zirconium trichlorohydrex Gly
Aluminum zirconium pentachlorohydrate
Aluminum zirconium pentachlorohydrex Gly
Aluminum zirconium tetrachlorohydrate
Aluminum zirconium tetrachlorohydrex Gly
Aluminum zirconium octachlorhydrate
Aluminum zirconium octachlorohydrex Gly
Aluminum chloride
Buffered aluminum sulfate

a. *Aluminum chlorhydrates (aluminum chlorohydrate, aluminum dichlorohydrate, aluminum sesquichlorohydrate, aluminum chlorohydrex PG, aluminum sesquichlorohydrex PG, aluminum dichlorohydrex PG, aluminum chlorohydrex PEG, aluminum sesquichlorohydrex PEG, aluminum dichlorohydrex PEG).* The Panel concludes that those materials, known as aluminum, chlorhydrates, in 25 percent or less concentrations calculated on an anhydrous basis are safe and effective for use as OTC antiperspirants as specified in the dosage and labeling sections discussed below.

Aluminum chlorohydrate has also been referred to as aluminum oxychloride, aluminum hydroxychloride, aluminum chloride hydroxide, aluminum chlorhydrate, and chlorhydrol. The aluminum chlorhydrates are commercially available in a number of forms which differ in the ratio of aluminum to chlorine. The empirical formulae of the salts most widely used as antiperspirants are $Al_2(OH)_4Cl_2$ and $Al_2(OH)_5Cl$, which are known as ⅔ basic and ⅚ basic aluminum chloride, respectively.

The aluminum chlorhydrate compounds are also available as polyethylene glycol or propylene glycol complexes. These comlexes have higher alcohol solubility than the uncomplexed salts. This property is desirable in certain topical formulations. The Panel considers these glycols to be formulation necessities which do not substantially alter the skin safety or antiperspirant activity of the salt from which they were prepared.

In water these materials will undergo hydrolysis, forming cationic polymeric species. The molecular weights determined for extremely dilute solutions of the ⅔ basic and ⅚ basic compounds are 975 and 1571, respectively (Ref. 1). A number of chemicals, e.g., sodium lactate (Ref. 2), will have a pronounced effect on the size and nature of the complex polymeric species formed. Increasing the pH of these solutions will tend to increase the size of the polymers.

Solutions of the aluminum chlorhydrates are acidic. The greater the aluminum to chlorine ratio in the material, the less acidic are its solutions. The pH of a 10 percent solution of the ⅔ basic compound is 3.5, while the pH of a 10 percent solution of the ⅚ basic material is 4.4 (Ref. 1).

Although physico-chemical measurements on these materials show significant differences, they do not appear to behave differently when applied to the skin.

(1) *Safety.* The Panel concludes, based on laboratory tests and market experience, that those materials known as aluminum chlorhydrates when applied topically to the underarms in nonaerosol formulations in concentrations of 25 percent or less calculated on any anhydrous basis are safe for use as antiperspirants.

Prior and Cronk in 1959 (Ref. 5) performed an experimental study to determine changes in skin pathology in albino rabbits following application of aluminum chlorhydroxide, aluminum sulfate, sodium aluminum lactate, or zirconium tetraisopropoxide. Acute inflammatory reactions with tissue necrosis and ulceration were noted when the aluminum compounds were injected subcutaneously or intravenously, with a more marked reaction at sites which had been previously deliberately injured. Percutaneous application of aluminum chlorhydroxide did not produce any significant lesions.

Primary skin irritation studies in rabbits using 2 to 24 percent concentrations of aluminum chlorhydrates produced a range of primary irritation indexes on the Draize scale from 0 to 3.7 (Refs. 6 through 18). The aluminum chlorhydrates would be considered mild to moderate irritants in animals based on this scale.

Subchronic dermal toxicity studies have been performed in rabbits using 3.4 to 30 percent concentrations of aluminum chlorhydrates. Except for skin irritation, no other significant adverse findings that could be attributed to the test compounds were found in any of the parameters investigated, which included hematologic studies, clinical blood chemistry studies, urine analyses, pathologic studies, and effects on body and organ weights (Refs. 6, 9, 12, 13, 15, 17, and 19 through 22).

Primary irritation patch tests using 3.5 to 30 percent concentrations of aluminim chlorhydrates in humans resulted in little or no irritation (Refs. 14, 20, and 23). Most of the results of repeated insult patch tests with 3.5 to 20 percent concentrations of aluminum chlorhydrates did not produce visible skin changes consistent with the criteria deemed characteristic of a primary irritant, a "skin fatiguing" agent, or a sensitizer (Refs. 6, 7, 9, 11, 12, 13, and 15). Only two manufacturers' submissions noted mild to moderate irritation with the repeated insult patch tests (Refs. 20 and 22). Results of various other patch testing techniques were consistent in producing little or no irritation with the aluminum chlorhydrates (Refs. 14, 18, 20, 21, 22, 24, and 25).

Market experience with aluminum chlorhydrates is also favorable. The number of cutaneous adverse reactions reported on products containing aluminum chlorhydrates is on the order of 6-per-million units according to industry (from combined complaint files). This is a relatively low number for topical products.

Recent data have shown skin changes in rabbits from injection of an aluminum chlorhydrate (Ref. 26). The Panel concludes, however, that those data support the findings of the Panel, that these reactions are not serious enough to disallow their OTC use.

(2) *Effectiveness.* The Panel was presented with a large amount of effectiveness data for the various aluminum chlorhydrates. Various methods have been used to determine the effectiveness of antiperspirants. The controlled hotroom gravimetric procedure to determine the percent reduction of axillary sweat is most often used. The procedure for this test is discussed elsewhere in this document. (See part II. paragraph H.4. above—Effectiveness testing of antiperspirants.)

Hotroom tests with 20 percent aqueous aluminum chlorhydrates produced sweat reductions in a range of 26 to 46 percent. Concentrations of aluminum chlorhydrates used in aerosol formulations (3 to 3.5 percent) produced sweat reduction values from 20 to 32 percent. Control tests using the vehicle without any active ingredient in the formulation produced sweat reduction values from 0.7 to 3.6 percent (Refs. 6 through 17, 19, 22, 23, 24, and 27 through 34).

A hotroom test using a 9 percent aluminum chlorhydrex PG, a propylene glycol complex of an aluminum chlorhydrate, produced a sweat reduction value of 43 percent (Ref. 23).

A gravimetric test performed with a 20 percent concentration of an aluminum chlorhydrate under ambient conditions produced a mean sweat reduction value of 30 percent (Ref. 15).

Emotionally induced sweat tests have also been used to determine the effectiveness of aluminum chlorhydrates as antiperspirants. Quatrale (Ref. 35) states that the volume of persipiration produced under emotional stress far exceeds that produced by subjects under thermal stress. The emotional sweat test involves gravimetric determinations of axillary sweat secreted under conditions of emotional

stress in an environment of 80° to 85° F and 35 to 50 percent relative humidity for a 15-minute timed interval. The amounts of sweat secreted from each axilla are compared by means of a ratio. Control ratios and rations obtained after treating one axilla with the antiperspirant are compared to obtain the percent sweat reduction. To induce emotional sweating, challenges are designed to produced tension, apprehension, frustration, or embarrassment. The word association list has been used most successfully, but alternative methods such as mental arithmetic and electric shock have also been used. Aerosel formulations containing 3 percent of an aluminum chlorhydrate were demonstrated to provide sweat reductions in the range of 25 to 33 percent, with an average of 30 percent. Two tests using 1.5 percent of an aluminum chlorhydrate aerosol produced sweat reductions of 11 and 13 percent, respectively (Ref. 18).

An exercise-induced sweat test in which sweating was generated by walking for 10 minutes at 3.5 miles per hour on a treadmill was also used to determine the effectiveness of an aluminum chlorhydrate. The results produced an average sweat reduction of 32 percent (Ref. 18).

A modified Wada's starch-iodine method using double-blind conditions was used to determine the effectiveness of 13 different products of varying concentrations of aluminum chlorhydrates (Ref. 21). The degree of inhibition of sweating was estimated to the nearest 25 percent. The scoring system was as follows: 0—treated side not different from control, 1—25 percent inhibition on treated side, 2—50 percent inhibition on treated side, 3—75 percent inhibition on treated side, 4— complete anhidrosis on treated side. Different groups of five men were utilized for each of the products tested. Total scores were determined for each product by adding the individual scores of each group of five men. The results were as follows:

RESULTS OF EFFECTIVENESS TESTING OF ALUMINUM CHLORYDRATES USING A MODIFIED WADA'S STARCH-IODINE METHOD

dosage form	Percent aluminum chlorhydrate	Total score of 5 subjects
Liquid	18	8
Cream	25	5
Cream	25	5
Roll-on	25	4
Cream	20	3
Cream	18	3
Liquid	22	2
Roll-on	24	2
Aerosol	3	2
Roll-on	21	1
Aerosol	5	1
Cream	11	1
Aerosol	4	0

It must be noted that this test is purely relative and estimates the effect of the treated axilla only in comparison to the untreated axilla. Results from this type of study do not permit conclusive judgments. However, it is interesting to note that the method of application can markedly influence the effectiveness of aluminum chlorhydrates, with the aerosols scoring the lowest.

The Panel concludes that those materials known as aluminum chlorhydrates in topical nonaerosol formulations in concentrations of 25 percent or below calculated on an anhydrous basis are effective as antiperspirants according to the criteria established above by the Panel. (See part II paragraph H.4.f. above—Antiperspirant effectiveness qualification test.) The ability of certain organic and inorganic compounds to form complexes with aluminum salts is well established (Ref. 36). The presence of certain excipients which would alter the chemical activity of the aluminum chlorhydrate species could conceivably alter its biological activity. The ability of the aluminum chlorhydrates to reduce perspiration is known to be influenced by the presence of a variety of excipients (Ref. 37). In certain instances the formulation excipients have been known to reduce the level of antiperspirant activity below the level required by the Panel for effectiveness. Therefore, the Panel recommends that final product formulations be tested according to the procedures outlined in the effectiveness testing section of this document. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

(3) *Dosage.* Dosage is 25 percent or less concentration calculated on an anhydrous basis of a nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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b. *Aluminum zirconium chlorhydrates (aluminum zirconium trichlorohydrate, aluminum zirconium trichlorohydrex Gly, aluminum zirconium pentachlorohydrate, aluminum zirconium pentachlorohydrex Gly, aluminum zirconium tetrachlorohydrate, aluminum zirconium tetrachlorohydrex Gly, aluminum zirconium octachlorohydrate, aluminum zirconium octachlorohydrex Gly).* The Panel concludes that those materials, known as aluminum zirconium chlorhydrates, in 20 percent or less concentrations calculated on an anhydrous basis are safe and effective for use as OTC antiperspirants as specified in the dosage and labeling sections discussed below. There are now three types of aluminum zirconium chlorhydrate complexes which are commercially available for antiperspirant use. They differ in their atomic ratios of aluminum to zirconium to chlorine.

Glycine is sometimes added to these complexes for formulation purposes. It will coordinate with these polymeric species by displacing some of the waters of hydration. When glycine is present, the name given to the aluminum-zirconium complex should be suffixed with the letters "Gly."

These materials are cationic polymeric species which are loosely hydrated. Solutions of them are acidic, having a pH around 4. They will precipitate from solutions as gels when the pH is above 5. An evaluation of these compounds was discussed in a previous report of the Panel published in the FEDERAL REGISTER of June 5, 1975 (40 FR 24328).

While the Panel expressed serious concern over the advisability of permitting aerosolized forms of those salts to be sold, it found no reason not to permit their use for direct application to the skin.

(1) *Safety.* Safety testing and marketing experience with the aluminum zirconium chlorhydrates suggest that such products should be categorized as safe provided they are not in a respirable aerosol form. The safety of the zirconium-containing compounds was discussed in an earlier report of this Panel and published in the FEDERAL REGISTER of June 5, 1975 (40 FR 24328).

Subsequently, experimental data showed skin changes in rabbits that had undergone injections of zirconium aluminum glycine complex compound (Refs. 1 and 2). The Panel concludes, however, that those data support the earlier finding of the Panel—that these reactions are not serious enough to disallow their OTC use when applied topically by a nonaerosol method.

(2) *Effectiveness.* Effectiveness testing and marketing experience with the aluminum zirconium chlorhydrates in concentrations of not more than 20 percent calculated on an anhydrous basis suggest that such products should be Category I for effectiveness as antiperspirants. However, since the presence of certain excipients has been known to reduce the level of antiperspirant activity below the level required by the Panel for effectiveness, the Panel recommends that final product formulations of the aluminum zirconium chlorhydrates be tested for effectiveness according to the procedures outlined in the effectiveness testing section of this document. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

(3) *Dosage.* Dosage is 20 percent or less concentration calculated on an anhydrous basis of a nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

REFERENCES

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c. *Aluminum chloride.* The Panel concludes that aluminum chloride in 15 percent or less concentration calculated on the hexahydrate form in aqueous solution is safe and effective for use as an OTC antiperspirant as specified in the dosage and labeling sections discussed below. Although the structure of this compound has been established in the solid state (Ref. 1), its structure in aqueous solutions has not been fully elucidated (Ref. 2). The compound hydrolyzes in water, resulting in the formation of oxychlorides and a high concentration of hydrogen ion. The pH of a 10 percent solution is approximately 2.5. Various experiments indicate that the oxychlorides formed are polymeric species (Ref. 2).

The hydrolysis of aluminum chloride can be influenced by the presence of other compounds in solution. For example, potassium chloride suppresses hydrolysis (ref. 3). Altering the pH of aluminum chloride solutions will have a profound effect on the polymeric species formed on hydroloysis.

(1) *Safety.* Results of primary skin irritation studies in rabbits using aluminum chloride in concentrations from 10 to 20 percent in aqueous solutions show that aluminum choride is a mild to moderate irritant producing primary irritation indexes in a range from 0.5 to 2.8 (Ref. 4).

An acute eye irritation study in rabbits using a 13.3 percent aqueous solution of aluminum chloride hexahydrate produced mild conjunctivitis at the 24 hour reading only. No irritation of the eye was noted after the 48 or 72 hour readings (Ref. 5).

The responses of mouse, rabbit, and pig skin to topically applied solutions of six aluminum salts (aluminum chloride, aluminum nitrate, aluminum sulfate, aluminum hydroxide, aluminum acetate, and an aluminum chlorhydrate) were also studied (Ref. 6). Test solutions wer applied daily for 5 consecutive days. The test sites remained uncovered throughout the test period. Epidermal changes consisted of hyperplasia, microabscess formation, dermal inflammatory cell infiltration and occasionally ulceration in all three species treated with aluminum chloride in a 10 percent concentration, but not with 10 and 25 percent concentrations of aluminum chlorhydrate.

A 21-day repeat insult patch test was used to evaluate in irritancy of a 20 percent aqueous solution of aluminum chloride hexahydrate in humans (Ref. 7). Test substance was applied to 1-inch squares of a nonwoven cloth and placed on the back of the subject with an occlusive tape. The patch remained in place for 24 hours and was reapplied daily at the same site. The end point was determined as the first day that redness appeared at the site. Twenty-five subjects were used in this study. Irritation was produced on day 2 in one subject, between days 3 and 5 in 23 of 25 subjects, and on day 7 in the final subject.

Ten and 15 percent aqueous solutions of aluminum chloride hexahydrate were tested for irritancy with 6 other formulations using the repeat insult patch method (Ref. 7). Both of these solutions proved relatively irritating to the skin compared to the other compounds with an average day of reaction at 7 days.

During a gravimetric hotroom effectiveness test with a 13.3 percent aqueous solution of aluminum cloride, all 6 test subjects tested during the first test period developed irritation. Four of these six test subject also complained of tenderness and burning of the axillae. Becasue of the irritation observed during the first test period, one of the applications of aluminum chloride was omitted during the second test period. Four of the six test subjects treated with aluminum chloride during this second test period showed slight erythema. The irritation during this period was much less severe than that observed during the first test period. There were no complaints of discomfort (Ref. 5).

Other effectiveness tests have also reported irritation (Ref. 8). Because of the high incidence of irritation in one test, only 4 of 12 test subjects received all 7 scheduled applications of a 15 percent aqueous solution of aluminum chloride hexahydrate. Six of the other eight test subjects received six applications, and two test subjects received only three applications of the antiperspirant material. No irritation was noted, however, in two subsequent effectiveness tests performed with the same concentration of aluminum chloride hexahydrate.

Market experience with aluminum chloride also suggests that it is more irritating than other compounds placed in Category I as antiperspirants.

The Panel concludes, based on the irritation studies and market experience presented, that aluminum chloride, in aqueous solutions of 15 percent or less calculated on the hexahydrate form, is safe for use as an antiperspirant. However, the Panel concludes that the consumer should be warned about the irritation potential of this material. (See part III. paragraph B.1.c.(4) below—Labeling.)

(2) *Effectiveness.* Herrmann, in 1961, noted that experimentally, a decline in

axillary sweating may be achieved with an aqueous solution of 12 to 20 percent aluminum chloride (Ref. 9).

Several tests using the starch-iodine technique on the forearms of subjects show that aluminum chloride hexahydrate is an effective antiperspirant as compared to untreated sites (Ref. 8).

Zahejsky and Rovensky, in 1972 (Ref. 10), compared the effectiveness of several antiperspirants, including a 15 percent aqueous solution of aluminum chloride hexahydrate, on the forearms of human subjects. Changes in the sweat pattern were recorded with a resistance hygrometer and simultaneously with a contact indicator test when sweating was induced by exposing the subjects to heat (55° C) in a polypropylene tent. The authors noted a significant reduction in sweating after a 3-hour exposure to the aluminum chloride solution, and even greater reduction after a 10-hour exposure.

Three different gravimetric hotroom tests were performed to compare the effectiveness of a 15 percent aqueous solution of aluminum chloride hexahydrate and a 22 percent solution of an aluminum chlorhydrate (Ref. 8). In each of the three tests, both of the antiperspirants were found to be equally effective. It must be noted, however, that the procedures used in each of the three tests had weaknesses, since both axillae were treated during the test period, and the reduction in the amount of perspiration could be determined only in reference to the control period. Also, in one of the tests, the irritation produced with aluminum chloride hexahydrate caused a majority of the test subjects to discontinue applications of that test material prior to the final test day.

A study was performed to determine and compare the effectiveness of a 13.3 percent aqueous solution of aluminum chloride hexahydrate and a 22 percent solution of an aluminum chlorhydrate (Ref. 5). Evaluations of antiperspirant activity were made at 1 hour following the second sample application and 12 and 84 hours following the third and fourth applications, for each of the 2 test periods. The percent sweat reductions within 95 percent confidence limits were as follows:

EFFECTIVENES COMPARISON OF TWO ANTIPERSPIRANT MATERIALS

Sample	Percent sweat reduction		
	Hours after application		
	1	12	84
13.3 percent aluminum chloride hexahydrate	17.8	48.5	48.8
22 percent aluminum chlorhydrate	26.3	34.7	21.7

Significantly greater reductions in sweating were noted from the applications of aluminum chloride than from the aluminum chlorhydrate at 12 and 84 hours following application.

The Panel concludes that a 15 percent or less aqueous solution of aluminum chloride is an effective antiperspirant, but also has a greater potential for producing irritation compared with other Category I ingredients. However, since 15 percent or less aqueous solutions of aluminum chloride show significantly greater reductions in perspiration compared with other antiperspirant materials which produce little or no irritation, the Panel recommends that 15 percent or less aqueous solutions of aluminum chloride calculated on the hexahydrate form applied topically by a nonaerosol technique be placed in Category I. However, since the presence of certain excipients has been known to reduce the level of antiperspirant activity below the level required by the Panel for effectiveness, the Panel recommends that final product formulations of aluminum chloride preparations be tested for effectiveness according to the procedures outlined in the effectiveness testing section of this document. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

(3) *Dosage.* Dosage is 15 percent or less concentration calculated on the hexahydrate form of an aqueous solution nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.) In addition to the standard warning required for antiperspirants, the following warning should prominently appear on the container to warn the user of the greater irritancy potential of aluminum chloride over other marketed antiperspirants: "*Warning:* Some users of this product will experience skin irritation."

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d. *Buffered aluminum sulfate.* A product containing 8 percent aluminum sulfate buffered with 8 percent sodium aluminum lactate has had wide use over many years. The discussion of unbuffered aluminum sulfate appears elsewhere in this document. (See part III. paragraph B.3.d. below—Aluminum sulfate.)

(1) *Safety.* The safety of aluminum sulfate as an antiperspirant ingredient is discussed elsewhere in this document. (See part III. paragraph B.3.d.(1) below—Safety.) Aluminum sulfate when used alone as an antiperspirant produces a high degree of irritation. The presence of sodium aluminum lactate alters the pH in such a way so as to decease the irritating nature of the aluminum sulfate.

A primary irritation study was performed using three different formulations of buffered aluminum sulfate (Ref. 1). The test material was applied to the shaved backs of three groups of six albino rabbits and held in place for 24 hours. Dermal irritation readings were taken at the end of the 24-hour period and again at 72 hours. Dermal irritation scores using the Draize scale (Ref. 2) were zero in all of the rabbits tested.

Numerous-use tests in humans, each test of 2 weeks' duration, have been performed to evaluate the safety of buffered aluminum sulfate (Ref. 1). Irritation or sensitization was not reported in any of the tests.

A standard Draize-Shelanski repeated insult patch test was also performed in 204 human subjects (Ref. 1). The scoring system was as follows: (0)—no reaction; (1+)—slight reaction; (2+)—marked erythema; (3+)—marked erythema, edema, with or without vesicles; (4+)—marked erythema, edema, with vesicles and oozing. Forty-six of the 204 subjects had a score of 1+, 20 had a score of 2+, and 4 subjects had a score of 3+. None of the subjects had a score of higher than 3+. The reactions produced with the test material (8 percent aluminum sulfate buffered with 8 percent sodium aluminum lactate) were milder and less numerous than those produced with the control, which was Ivory™ soap.

The incidence of complaints of adverse reactions with buffered aluminum sulfate is also low, on the order of 0.9 complaint per million units shipped (Ref. 1).

(2) *Effectiveness.* The effectiveness of unbuffered aluminum sulfate is discussed elsewhere in this document.

(See part III. paragraph B.3.d.(2) below—Effectiveness.)

A gravimetric test performed under ambient conditions was conducted on 36 subjects to determine the effectiveness of buffered aluminum sulfate (Ref. 1). Mean percent sweat reductions were produced in the range of 25.43 to 28.94 percent.

Another gravimetric test was conducted under both ambient and hotroom conditions on 36 subjects (Ref. 3). Buffered aluminum sulfate proved effective as an antiperspirant producing mean percent sweat reductions of 29.1 percent under ambient conditions and 31.3 percent under hotroom conditions.

The Panel concludes that 8 percent aluminum sulfate when buffered with 8 percent sodium aluminum lactate is safe and effective when applied topically in nonaerosol form, and therefore places it in Category I. However, since the presence of certain excipients has been known to reduce the level of antiperspirant activity below the level required by the Panel for effectiveness, the Panel recommends that final product formulation of buffered aluminum sulfate be tested for effectiveness according to the procedures outlined in the effectiveness testing section of this document. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

(3) *Dosage.* Dosage is 8 percent concentration of aluminum sulfate buffered with 8 percent concentration of sodium aluminum lactate in a nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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(3) OTC Volume 140052.

CATEGORY I LABELING

The Panel recommends the following Category I labeling for antiperspirant active ingredients to be generally recognized as safe and effective and not misbranded.

a. *Indications.* (1) "Helps reduce underarm wetness," or "Helps reduce underarm dampness," or "Helps reduce underarm perspiration."

(2) In addition, the Panel concludes that the following statement should appear on the label to explain to the consumer the level of effectiveness that can be expected: "Products described as antiperspirants can be expected to produce at least a 20 percent reduction in underarm perspiration in at least half the users when applied once daily."

The Panel concludes that a minimum effectiveness statement is necessary on the label to disclose material facts of significant benefit to the consumer. The facts are as follows: (1) The antiperspirant the consumer is buying has been tested for effectiveness; (2) the probable percent sweat reduction is as little as 20 percent; and (3) since individuals vary in their response to antiperspirants, the product may or may not acheive a 20 percent sweat reduction for the user.

Claims are made for antiperspirants in the advertising media which exaggerate their effectiveness. Strong marketing efforts of a highly competitive nature create an apparent necessity for these products. The Panel believes that there should be one place where the consumer can find accurate information about the product's effectiveness. This information should be accessible to all potential users; there seems to be no better place for it than on the label. The Panel believes that this information is of significant value to the consumer in that it counters the misleading statements of antiperspirant advertisers that antiperspirants are extremely effective.

b. *Warnings*—(1) *For products containing any antiperspirant ingredient.* The Panel concurs with the warning now required under 21 CFR 369.20 for antiperspirants: "Do not apply to broken skin. If a rash develops, discontinue use."

(2) *For products containing aluminum chloride*—"*Warning:* Some users of this product will experience skin irritation."

c. *Directions for use.* "Apply to skin of underarms. Not to be used generally over the body."

2. *Category II conditions under which antiperspirants are not generally recognized as safe as effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC antiperspirant drug products effective 6 months after the date of publication of the final mongraph in the FEDERAL REGISTER.

CATEGORY II ACTIVE INGREDIENTS

The Panel has classified the following antiperspirant active ingredients as not generally recognized as safe and effective or are misbranded.

Zirconium-containing salts (aerosolized).
Aluminum chloride (alcoholic solution).
Aluminum bromohydrate.

a. *Zirconium-containing salts (aerosolized).* In the FEDERAL REGISTER of August 16, 1977 (42 FR 41374), the Commissioner issued a final rule that any aerosol drug or cosmetic product containing zirconium is a new drug or adulterated cosmetic. This action had the effect of removing these agents from the market until safety testing adequate for approval of a new drug application has been conducted.

The Commissioner's action had previously been urged by the Panel in a report published in the FEDERAL REGISTER of June 5, 1975 (40 FR 24328). The Commissioner's decision was based on the Panel's judgment of unresolved questions concerning the likelihood that zirconium-containing aerosol products might produce granulomas when inhaled by users over a period of many months or years. The Panel report cited published and submitted evidence that under certain conditions, zirconium-containing chemicals have produced granulomas in man and in experimental animals. The report concluded that in the light of such evidence, and in the absence of satisfactory chronic inhalation toxicity studies, benefit to risk considerations did not warrant the continued sale of aerosolized zirconium-containing salts.

b. *Aluminum chloride (alcoholic solutions).* Shelley and Hurley (Ref. 1) have reported that an alcoholic aluminum chloride solution is both safe and effective when applied to a fully dried axilla at bedtime or at the start of some other prolonged nonsweating period, and when covered with an impermeable polyethylene-type plastic wrap for a period of 6 to 8 hours. The Panel concludes, however, that alcoholic solutions of aluminum chloride are Category II for use as OTC antiperspirants. While one manufacturer submitted data to consider a 20 pecent alcoholic solution of aluminum chloride for OTC use, the Panel recognizes that the marketing history of the product has, heretofore, been limited to prescription use.

(1) *Safety.* An irritancy evaluation comparing a 15 percent aqueous aluminum chloride solution and a 20 percent alcoholic solution of aluminum chloride showed that the alcoholic solution was no more irritating than the aqueous solution (Ref. 2). The Panel concludes that this single test is not adequate to establish the safety of alcoholic solutions of aluminum chloride for OTC use since the product has been limited to carefully contolled conditions of use (applied to a fully dried axilla and covered with plastic wrap for 6 to 8 hours). Data are lacking to show that the product would be safe if proper attention was not given to these special conditions of use.

(2) *Effectiveness.* Shelley and Hurley (Ref. 1) claim not only the usual level of antiperspirant effectiveness for the 20 percent alcoholic aluminum chloride products, but they also state that

when used as directed the product can provide total control of axillary wetness in patients who have sweating excessive enough to be classified as hyperhidrosis. While the submissions for the alcoholic solution of aluminum chloride did not include the vast quantity of hotroom data which accompanied most other product submissions, the Panel concluded that this ingredient would produce enough reduction in underarm perspiration to be classified as an effective antiperspirant (Refs. 2, 3, and 4).

(3) *Evaluation.* The Panel concludes that alcoholic solutions of aluminum chloride are Category II because of the paucity of skin irritancy data and the fact that this product has been limited to prescription use. Whether or not this product, if available OTC, would be used correctly, with proper attention to a dry axilla and plastic film occlusion, cannot be determined from the data submitted. It cannot be determined from the submitted data to what degree this product could be used without special attention to a dry axilla and/or plastic film occlusion without altering its safety and/or effectiveness.

Until each of these questions can be answered, the Panel concludes that alcoholic solutions of aluminum chloride should remain limited to prescription use as antiperspirants.

REFERENCES

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(2) OTC Volume 140063.
(3) OTC Volume 140057.
(4) OTC Volume 140060.

c. *Aluminum Bromohydrate.* The Panel concludes that aluminum bromohydrate is Category II for use as an OTC antiperspirant. While aluminum bromohydrate could be proven both safe and effective with further testing, this material is a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) since it has never been marketed in this country as an antiperspirant. This material has a similar chemical formula to the 5/6 basic aluminum chlorohydrate. The aluminum to bromine ratio is 2 to 1 and the pH of a 10 percent aqueous solution is approximately 4.2.

(1) *Safety.* The oral LD_{50} of aluminum bromohydrate appears to be greater than 8,000 mg/kg in rats, which would be considered nontoxic (Ref. 1). Aluminum bromohydrate has been tested on animals for irritancy, sensitization, and acute inhalation toxicity. Aerosol applications of 3.5 percent and 10 percent concentrations of aluminum bromohydrate to the corneal surface of the eye of albino rabbits did not cause irritation when tested in accordance with procedures outlined in the Federal Hazardous Substances Act. However, when a 10 percent concentration of an aluminum bromohydrate aerosol was expelled and the liquid placed directly in the eye, the material was found to be a severe irritant (Ref. 1).

Aluminum bromohydrate has also been tested for primary skin irritancy (Ref. 1). When 3.5 or 10 percent concentrations of aluminum bromohydrate were applied to albino rabbits according to the Draize procedure (Ref. 2), neither concentration was deemed a primary skin irritant.

A 3-week dermal toxicity study was performed with 3.5 and 10 percent concentrations of aluminum bromohydrate (Ref. 1). Except for varying degrees of irritation, no other adverse findings were reported in any of the other parameters investigated which included hematology, biochemistry, and urinalysis studies.

Based on the Results of a dermal sensitization study performed in guinea pigs, a 10 percent concentration of aluminum bromohydrate would appear to be a sensitizer in man, whereas a 3.5 percent concentration would not (Ref. 1).

No adverse effects which could be attributed to the test material were noted in two separate 5-day acute inhalation studies using 10 percent aerosol formulations of aluminum bromohydrate in rats and guinea pigs (Ref. 1).

The Panel did not receive any human safety data on this material, nor was it able to find any such information in the scientific literature.

(2) *Effectiveness.* A gravimetric hotroom test was performed in humans with a 3.5 percent aerosol formulation and four other liquid formulations of aluminum bromohydrate varying in concentration from 20 to 32 percent. Reductions in sweating were reported in the range of 35 to 51 percent (Ref. 1).

(3) *Evaluation.* The Panel concludes that while aluminum bromohydrate could possibly be proven a safe and effective OTC antiperspirant with further testing, it is placed in Category II since it has never been marketed in this country as an antiperspirant. Before this material can be marketed as an OTC antiperspirant, an approved new drug application is required, or a determination must be made that this ingredient is generally recognized as safe and effective in a monograph.

REFERENCES

(1) OTC Volume 140014.
(2) Draize, J. H., "Dermal Toxcity," *in* "Appraisal of Safety of Chemicals in Foods, Drugs, and Cosmetics," Association of Food and Drug Officials of the U.S., Texas State Dept. of Health, Austin, Tex., pp. 46-59, 1959.

CATEGORY II LABELING

The Panel has examined the submitted labeling claims for antiperspirants and has placed certain claims into Category II:

a. Those implying the ability to totally stop underarm perspiration: "stops," "halts," or "ends," since antiperspirants are not capable of totally inhibiting perspiration production.

b. Those which may misled about enhanced antiperspirant effect by using descriptions of their formulation with terms like "dry" and "dry formula." The use of such terms to describe physical attributes of the product such as "goes on dry," or other descriptive terms such as "mild," "gentle," "pleasant," "comfortable," however, are considered cosmetic claims and will not be disallowed.

c. Those which suggest use for other areas of the skin beyond the axillae, except for hand and foot claims which are discussed in Category III. (See part III. paragraph B.3. below—Category III Labeling.)

The Panel discussed the rationale for this limitation earlier in this document. (See part II. paragraph C.2.e. above—Function of the gland.)

d. *Extra-strength claims:* The term "extra-strength" normally refers to increased concentration of the active ingredient which would normally mean added effectiveness. However, the Panel concludes that the presence of more active ingredient in an antiperspirant cannot be used as a basis for a claim of added effectiveness since additional amounts of antiperspirant active ingredient do not necessarily result in improved product effectiveness. (See part II. paragraph H. above—Effectiveness of Antiperspirants.) Therefore, the Panel concludes that the term "extra-strength" is Category II. However, the Panel will allow claims of "extra-effective" if properly substantiated. (See part III. paragraph B.3. below—Category III Labeling.)

e. *Unacceptable labeling claims:* The following is a list of unacceptable labeling claims that were submitted for the antiperspirant products: "Helps stop wetness," "Completely guards your family," "Helps stop embarrassing perspiration wetness," "Complete protection," "Super dry," "Really helps keep you dry," "Gentle enough for sensitive areas of the body."

MINORITY STATEMENT REGARDING LABELING

A minority opinion exists with regard to permissible labeling claims. Two Panel members believe that to enumerate allowable words and phrases and to disallow all others is

unduly restrictive and subject to inherent difficulty in enforcement.

The Panel did not see scientific data to indicate that a consumer can differentiate between such words as "halts," "checks," "stops," and "ends" as disallowable words versus "diminishes" and "reduces" as allowable words. Further, to disallow such aptly descriptive words as "dry formula" for fear that they might imply complete cessation of perspiration is hardly likely and even if this confusion were to occur, no real harm is done to the consumer.

These phrases are historically and correctly part of American competitive marketing.

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.*

CATEGORY III ACTIVE INGREDIENTS

The Panel has concluded that the available data are insufficient to permit final classification of the following antiperspirant active ingredients listed below. The Panel believes it reasonable to provide 5 years for the development and review of the necessary data to prove the safety of long term use of aersolized anitperspirants and 2 years for the development and review of the necessary data for all other Category III conditions. The active ingredients are as follows:

Aluminum chlorohydrates (aerosol formulations):

Aluminum chlorohydrate, aluminum dichlorohydrate, aluminum sesquichlorohydrate, aluminum chlorohydrex PG, aluminum sesquichlorohydrex PG, aluminum dichlorohydrex PG, aluminum chlorohydrex PEG, aluminum sesquichlorohydrex PEG, aluminum dichlorohydrex PEG, sodium aluminum chlorohydroxy lactate, aluminum chloride (aerosol formulations), aluminum sulfate, and potassium aluminum sulfate.

a. *Aluminum chlorohydrates (aluminum chlorohydrate, aluminum dichlorohydrate, aluminum sesquichlorohydrate, aluminum chlorohydrex PG, aluminum dichlorohydrex PG, aluminum sesquichlorohydrex PG, aluminum chlorohydrex PEG, aluminum dichlorohydrex PEG, aluminum sesquichlorohydrex PEG).* The Panel concludes that there are insufficient data to determine the safety and effectiveness of those materials known as aluminum chlorohydrates for use as OTC antiperspirants when used in aerosol formulations in concentrations of 25 percent or less calculated on an anhydrous basis.

(1) *Safety.* The Panel has concluded above that the aluminum chlorohydrates when applied topically in nonaerosol fomulations are safe for use as antiperspirants. (See part III. paragraph B.1.a.(1) above—Safety.) However, the Panel questions the safety of the long term use of these ingredients when applied in an aerosol form. (See part II. paragraph G.4.a. above—Safety of long time use of aerosolized antiperspirants.) The Panel concludes that the available data on the long term use of aerosolized aluminum chlorohydrates as antiperspirants are insufficient to permit final classification at this time.

The commerical aerosol aluminum chlorohydrate products will either spray the antiperspirant as solid particulates or fine liquid droplets. From the inhalation data provided to the Panel it is not possible to gauge which of these systems has a greater inhalation risk associated with its use. Therefore, the Panel expects that a series of preliminary studies on the different aluminum chlorohydrate active ingredients in a variety of vehicles will determine the inhalation risk of these aerosol sprays. This will require data on their aerodynamic particle size distributions, acute inhalation toxicologies, and rebound characteristics from the target site.

Acute inhalation studies have been performed in animals using the various aluminum chlorohydrates. In several tests albino rabbits were exposed to 20-second sprays of aluminum chlorohydrate every 30 minutes for at least 4 hours (Refs. 1 through 4). An equal number of animals were used as controls and were handled in the same manner as the test animals, but were not exposed to any test material. Each animal was observed for gross signs of systemic toxicity during the exposure period and daily thereafter for 14 days. At the conclusion of the 14 days each animal was sacrificed and necropsied. This same type of inhalation study has been performed in rats (Refs. 5 and 6). All of the tests produced consistent results. Observations for gross toxic signs, gross necropsy findings, and histopathology showed no difference between the test and the control animals.

In another type of acute inhalation test, 20 rats were exposed to a 200 mg/liter concentration of aluminum chlorohydrate for a single 1-hour period (Ref. 1). Twelve rats not exposed to the test material served as the control group. Twenty-four hours after exposure, half of the animals were necropsied. The remaining animals were observed daily for physical and behavioral changes and necropsied 14 days after the initial exposure. Fourteen of the 20 test animals developed wheezing within 24 hours after exposure to the aluminum chlorohydrate. Two of the 12 control animals also developed wheezing. Other gross signs, gross necropsy findings, and histopathology showed no difference between the test and untreated control animals.

The Panel has also reviewed a number of subchronic inhalation studies using aerosol formulations of the various aluminum chlorohydrates (Refs. 1 through 5). In one study (Ref. 1) cynomolgus monkeys were exposed to a 10-second aerosol burst of a 3.4 percent aluminum chlorohydrate every 5 minutes for 20 minutes in the morning and again in the afternoon for 90 consecutive days. The untreated control animals were also placed in an inhalation chamber for two 20-minute periods daily without any aerosol exposure.

Observations were made with respect to incidence of mortality and behavioral and body weight effects. Hematological and clinical blood chemistry studies, urine analyses, and pulmonary function tests were conducted on all animals. At the conclusion of the study, all animals were sacrificed and subjected to gross pathological examinations. This same procedure was used in another test (Ref. 2), except the cynomolgus monkeys were exposed to a 13-second burst aersolized 3.4 percent aluminum chlorohydrate every 5 minutes for 20 minutes in the morning and afternoon for 90 consecutive days.

In another inhalation study, rhesus monkeys were exposed to 5-second sprays every 5 minutes for a total of 3 sprays in the morning and again in 5 hours, 5 days a week for 13 weeks. The control animals were exposed to distilled water.

Albino rabbits have also been used in subchronic inhalation studies (Ref. 4). The test rabbits were exposed to a 30-second burst of 3.5 percent aluminum chlorohydrate followed by a 15-minute exposure to the resulting atmosphere. The procedure was repeated twice daily, 5 days a week for 13 weeks. Control animals were exposed to the aerosol minus the active ingredient using an identical exposure regimen. This same procedure has been used in rats (Ref. 5).

In all of the subchronic inhalation tests outlined above, there were no adverse effects produced in the animals which could be attributed to the inhalation of the test materials. Results of the test groups of animals were essentially the same as those for the controls.

The Panel concludes that the acute and subchronic toxicity studies adequately document the short-term safety of aluminum chlorhydrate aerosolized products. However, the Panel recognizes that consumers may use these products for a significant portion of their lives. Since the Panel has not been presented with any data to demonstrate the safety of long term use, it is requiring an inhalation toxicity study which would reflect this long term use. (See part III. paragraph C.2. below—Guidelines for tests to be done for aerosolized antiperspirant sprays to be classified as Category I.)

(2) *Effectiveness.* The Panel concludes that the various aluminum chlorhydrates have been found to be effective antiperspirants. (See part III. paragraph B.1.a.(2) above—Effectiveness.) However, the aerosol method of application requires a number of excipients which are unique to these systems. Some of the excipients required can be expected to retard the activity of the antiperspirant to a level below that required under the Panel's definitin of an antiperspirant (Ref. 7).

Therefore, as with all other antiperspirant formulations, aerosol formulations of aluminum chlorhydrates will be required to be tested for effectiveness. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test).

(3) *Proposed dosage.* Dosage is 25 percent or less concentration calculated on an anhydrous basis applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. above—Category I labeling.)

(5) *Evaluation.* The Panel concludes that while the aluminum chlorhydrates may be effective as antiperspirants, the safety data on the long term use of these products in an aerosolized form are insufficient to permit final classification at this time. Therefore, aerosol formulations of the aluminum chlorhydrates are Category III until such data are made available. To become Category I, an inhalation test as outlined below is required by the Panel (See part III. paragraph C.2. below—Guidelines for tests to be done for aerosolized antiperspirant sprays to be classified as Category I.) In addition, since various excipients used in the formulation may retard the effectiveness of the aluminum chlorhydrates, aerosol formulations will be required to be tested for effectiveness as outlined above. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

(1) OTC Volume 140001.
(2) OTC Volume 140005.
(3) OTC Volume 140007.
(4) OTC Volume 140011.
(5) OTC Volume 140020.
(6) OTC Volume 140033.
(7) Majors, P. A. and J. E. Wild, "The Evaluation of Antiperspirant Efficacy—Influence of Certain Variables," *Journal of the Society of Cosmetic Chemists*, 25:139-152, 1974.

b. *Sodium aluminum chlorhydroxy lactate.* This material is produced by the reaction of aluminum chlorhydrate (5/6 basic) with lactic acid and subsequent neutralization with alkali up to a pH of 8.5. The compound is used in stick formulations where a compound which is compatible with soaps is needed (Ref. 1). The acidic aluminum salts react with soaps. This complex will produce anionic aluminum species in solution.

(1) *Safety.* Although no specific human safety studies were reported in the scientific literature, a few authors note that the material is not a human skin irritant (Refs. 1 and 2). Studies using rabbits (Ref. 3) suggest that the material is not a primary irritant on the skin, but do show that the compound can produce severe irritation of the eye when placed in the conjunctival sack. A human primary irritancy and sensitization study as a stick formulation containing approximately 18 percent of the active ingredient was submitted (Ref. 3). The repeated patch test was performed on the upper back of the subjects by standard procedures. There was no indication of any primary irritation and no indication of a sensitization potential on the challenge performed after the patch testing.

(2) *Effectiveness.* Hotroom tests performed on a stick formulation of the compound showed a mean perspiration reduction of 12 percent (Ref. 3). This is far below the level required for antiperspirant effectiveness by the Panel. Formulation changes could possibly alter the activity of the ingredient sufficiently to meet the effectiveness requirement.

(3) *Proposed dosage.* Dosage is 18 percent or less concentration calculated on the anhydrous form of a nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that sodium aluminum chlorohydroxy lactate is safe, but has placed this compound in Category III because the available effectiveness data are insufficient to permit final classification at this time. To become Category I, evidence of effectiveness as described earlier in this document is required. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

REFERENCES

(1) Kalish, J., "Aluminum Chlorhydroxylactate Complex," *Drug and Cosmetic Industry*, 79:318-319, 1956.
(2) Alexander, P. and V. Kinglake, "Antiperspirants and Deodorants: Formulations and Techniques and a Tabular Guide to UK Products," *Manufacturing Chemist Aerosol News*, 40:25-40, 1969.
(3) OTC Volume 140041.

c. *Aluminum chloride.* The Panel concludes that aluminum chloride may be effective, but there are insufficient data to determine safety for use as an OTC antiperspirant when used in aerosolized aqueous solutions of 15 percent or less calculated on the hexahydrate form.

(1) *Safety.* In addition to topical nonaerosol formulations as discussed under the Category I conditions above, aluminum chloride is also available to the public as an aerosol spray which is generated by a pump delivery system (Ref. 1). The concentration of the material in these spray systems is between 10 and 15 percent. To date the Panel has not received any data on the inhalation safety characteristics of this material. Without such information it is impossible to assess the safety of these products.

These products are being classified in Category III until such time that chronic aerosol inhalation tests are complete. The inhalation test for aluminum chloride should be of the same design as the one required for the aerosolized aluminum chlorhydrates except that aluminum chloride will be the test material. (See part III. paragraph C.2. below—Guidelines for tests to be done for aerosolized antiperspirant sprays to be classified as Category I.) The dose selected for these inhalation studies will be derived from experimentation designed to measure the concentration and particle size distribution of the active ingredient that reaches the breathing zone (area in front of nose and mouth) under heavy use conditions.

(2) *Effectiveness.* The effectiveness of this ingredient has been discussed earlier in this document. (See part III. paragraph B.1.c.(2) above—Effectiveness.) While aluminum chloride may be effective as an OTC antiperspirant, aerosol formulations must conform to the standards of effectiveness set by the Panel. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

(3) *Proposed dosage.* Dosage is 15 percent or less concentration of an aerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III. paragraph B.1. above—Category I Labeling.) In addition, the following warning should prominently appear on the label to warn the user of the greater irritancy potential of aluminum chloride over other marketed antiperspirants: "*Warning:* Some users of this product will experience skin irritation."

(5) *Evaluation.* The Panel concludes that aluminum chloride in concentrations of 15 percent or less may be effective as an antiperspirant, but the safety data on the long term use of aerosolized formulations are insufficient to permit final classification at this time. Therefore, aerosolized formulations of 15 percent or less concentrations of aluminum chloride are Cat-

egory III until such data become available. (See part III. paragraph C.2 below—Guidelines for tests to be done for aerosolized antiperspirant sprays to be classified as Category I.) In addition, aluminm chloride in aerosol form must conform to the standards set by the Panel concerning effectiveness. (See part II. paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

REFERENCES

(1) OTC Volume 140044.

d. *Aluminum sulfate.* The Panel concludes that there are insufficient data to determine the safety and effectiveness of aluminum sulfate for use as an OTC antiperspirant when used in topical nonaerosol formulations in concentrations of 11 percent or less. This compound, also known as cake alum and patent alum, exists in a number of hydrated states; the most common commercial product is the octadecahydrate (18 water of hydration). Aqueous solutions of this material are acidic, having pH values around 3. The compound hydrolyzes in water to form a series of complex species similar to aluminum chloride.

This compound is either formulated as a single ingredient or in combination with sodium aluminum lactate. The sodium aluminum lactate reduces the acidity of the sulfate. The buffered combination will have chemical properties uniquely different from each ingredient alone.

(1) *Safety.* A number of products containing this compound in concentrations less than 11 percent are available to the consumer. Animal tests and consumer complaints (Ref. 1) indicate that this compound is capable of producing skin irritation. The Panel is unaware of any controlled human studies on the material to assess its irritation potential and dermal safety. Such studies are necessary before the Panel can recognize the material as being generally safe for use as an antiperspirant.

(2) *Effectiveness.* Although aluminum sulfate has been shown to exhibit antiperspirant activity (Ref. 2), the Panel has not received any data on controlled human effectiveness studies.

(3) *Proposed dosage.* Dosage is 11 percent or less concentration of a nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III., paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that the available data on both the safety and effectiveness of topical nonaerosol Formulations of aluminum sulfate in 11 percent or less concentrations are insufficient to permit final classification at this time, and, therefore, classifies this ingredient as Category III. The Panel is requiring that a test be performed to determine the safety of this ingredient when applied to the skin. (See part III., paragraph C.1. below—Guidelines for products categorized as Category III because of inadequate data concerning their safety for the skin.) In addition, aluminum sulfate must conform to the standards set by the Panel concerning effectiveness. (See part II., paragraph H.4.f. above—Antiperspirant effectiveness qualification test.)

REFERENCES

(1) OTC Volume 140017.

(2) O'Malley, W. J., and J. E. Christian, "An Evaluation of the Ability of Antiperspirant Compounds to Reduce Perspiration Flow," *Journal of the American Pharmaceutical Association* (Scientific Edition), 49:402-404, 1960.

e. *Potassium aluminum sulfate.* This compound in its hydrated form is commonly referred to as alum. Aqueous solutions of it are acidic, having a pH of between 3 and 4. The compound is able to precipitate proteins from solution (Ref. 1). The styptic and astringent properties of the compound derive to a great extent from this property.

(1) *Safety.* Although the compound has been used as a topical astringent for an extensive period of time (Ref. 1) without any reports of adverse effects, the Panel is unaware of any controlled human safety data on the compound. Such tests must be carried out before the material can be recognized as being safe for topical use.

(2) *Effectiveness.* The Panel is unaware of any controlled human antiperspirant studies on this compound.

(3) *Proposed dosage.* Dosage is 1.5 percent or less concentration of a nonaerosol dosage form applied topically to the underarms.

(4) *Labeling.* The Panel recommends the Category I labeling for antiperspirant active ingredients. (See part III., paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that both the safety and effectiveness data on potassium aluminum sulfate as an antiperspirant are insufficient and, therefore, classifies this ingredient as Category III. In order become Category I, the Panel is requiring an effectiveness test as outlined above and safety tests as outlined below. (See part II., paragraph H.f.4. Above—Antiperspirant effectiveness qualification test and part III., paragraph C. below—Data Required for Evaluation.)

REFERENCES

(1) Stone, T. O., and C. O. Wilson, "Roger's Inorganic Pharmaceutical Chemistry," Lea and Febiger, Philadelphia, 1967.

CATEGORY III LABELING

The Panel has examined the submitted labeling claims for antiperspirants and has placed certain claims into Category III, for lack of adequate efficacy data.

a. *Claims of "extra-effective."* The presence of more active ingredient in an antiperspirant product cannot be used as a basis for a claim of "extra-effective" because additional amounts of active ingredient do not necessarily result in improved product effectiveness. (See part II., paragraph H. above—Effectiveness of Antiperspirants.) The Panel has placed the "extra-strength" claim in Category II because it implies improved performance through increases concentration. (See part III., paragraph B.2. above—Category II Labeling.)

The Panel concludes that antiperspirant products that can be proven to possess superior effectiveness ought to be allowed to claim this added benefit on their labels. However, the Panel believes it prudent and fair to both industry and the public to require satisfactory proof of additional effectiveness at a level meaningful to the user before such claims are allowed.

The Panel recommends the following to substantiate claim of "extra-effective": The product must produce at least a 30-percent reduction in perspiration as measured gravimetrically in adequately controlled, laboratory clinical tests using the procedures outlined by the Panel in the effectiveness testing section of this document. (See part II., paragraph H.4.f. above—Antiperspirant effectiveness qualification test.) In addition, a user perception test must be conducted to assure that the objectively validated increase in effectiveness is large enough to be perceptible by the user under normal conditions of use. The user perception test must be so designed as to measure the benefit attributable to the antiperspirant effect and not to the perfume or any other cosmetic feature. The statistical criteria and protocol for the user perception test are discussed later in this document. (See part III., paragraph C.3. below—Guideline for user perception test to be done for claims of "extra-effective" to be classified as Category I.)

b. *Claims for foot and hand antiperspirancy.* The materials placed in Category I have been shown through numerous clinical tests to be safe and effective antiperspirants when used in the axiliae. Although these materials would very likely reduce perspiration from other surfaces of the body, notably the hands and feet, there is a dearth of clinical evaluations of this effect.

The Panel is aware of only two controlled studies (Ref. 1) which tested an aluminum chlorhydrate formulation

as a foot antiperspirant. Although these investigations demonstrated a reduction of perspiration from the treated foot, the level of effectiveness was not correlated with user perception. To establish a standard for antiperspirant activity for the foot or hand, it is necessary to have information from the test subjects with regards to their perception of effectiveness. A user perception test similar in design to that required for Category III claims of extra-effective should be performed except that the test antiperspirant will be compared on the hands and/or feet to a placebo rather tha a standard antiperspirant. (See part III., paragraph C.3. below—Guidelines for user perception test to be done for claims of "extra-effective" to be classified as Category I.) Also, the test antiperspirant should produce at least a 20-percent reduction in the objectively measured test rather than the 30-percent reduction required for "extra-effective" antiperspirants. Until such information is provided, the claim of antiperspirancy on the hands and feet is to be considered a Category III claim.

c. *Claims for enhanced duration of effect.* The Panel has not received any scientific data which would support a claim of enhanced duration of antiperspirancy. The duration of the pharmacological effect of Category I and III ingredients has never been established. Without such information it is not possible for a product to claim prolonged or enhanced duration of effect. If a claim for a specific or prolonged duration of activity is to be made for an antiperspirant formulation it must be substantiated by a modification of the protocol described for the measurement of effectiveness. (See part II., paragraph H.4.f. above—Antiperspirant effectiveness qualification test.) The perspiration rate of the test subjects must be measured at various times after application. At least two times must be selected which span the period of the claim. The percent sweat reduction values determined at the various times must pass the statistical test outlined for data treatment.

d. *Claims suggesting use for "problem" or "especially troublesome" perspiration.* The Panel has not received any data which would support a claim for use in problem or especially troublesome perspiration. The Panel concludes that in order for claims of this type to become Category I, a user perception test, similar in design to that required for claims of "extra-effective," must be performed except that only the upper 5 percent of sweaters (heavy sweaters) should be included in the test. (See part III., paragraph C.3. below—Guidelines for user perception test to be done or claims of "extra-effective" to be classified as Category I.) The user perception test should be performed only if the test antiperspirant produces at least a 30-percent reduction using the objective gravimetric test.

e. *Claims for control of emotional sweating.* Axillary perspiration can also be elicited by emotional stimuli. Under certain psychologically stressful situations the amount of axillary sweat produced was found to be twice as great as that derived under typical hotroom procedures (Ref. 2). Although there is a sufficient amount of scientific evidence to make an assessment of the effectiveness of many materials in controlling thermally induced perspiration, such is not the case regarding emotional sweating.

Some general procedures have been described for the measurement of the effectiveness of a formulation in retarding emotionally stimulated axillary sweat (Refs. 2 and 3). The procedures are similar in many respects to those used in the hotroom test. The major exceptions are with regard to the environmental conditions, usually between 70° F and 80° F, and the challenge used to initiate emotional sweat. The test subjects can be challenged individually or as a group. The stimuli can take the form of mental arithmetic, memory games, word associations, lists, electric shock, singing, storytelling, and verbal quizzes. The degree of reduction of emotionally induced perspiration can be assessed by comparing a test formulation against a control. It is important that the control and test formulations be studied under similar stress conditions. For treatment of data see the antiperspirant effectiveness testing section of this report. (See part II., paragraph H.4. above—Effectiveness testing of antiperspirants.)

The copious amounts of perspiration stemming from psychological stress are exceedingly difficult to control. Shelley and Hurley (Ref. 4) suggested that many antiperspirants are washed away from their site of action by the large amounts of sweat produced by emotional stimuli. This could result in a greatly diminished activity.

The data available to the panel on aluminum chlorhydrate (Ref. 3) suggest that this material can be formulated in a manner which can reduce emotional sweating. Whether the degree of reduction measured is perceptible to the subjects was not determined. Since the sweat output is high under such stress, it is important to have information regarding the perceived degree of axillary wetness to establish standards for antiperspirancy.

A user perception test similar in design to the one required for "extra-effective" claims will be required for claims for control of emotional sweating to move from Category III to Category I. However, the test antiperspirant will be compared to a placebo rather than a standard antiperspirant, and sweating will be induced by emotional stimuli rather than the hotroom or ambient methods. (See part III., paragraph C.3. below—Guidelines for user perception test to be done for claims of "extra-effective" to be classified as Category I.)

Until such a time (within 2 years after the final monograph) that these data are made available and evaluated, all claims regarding control of emotional sweating are deemed Category III.

f. *Category III labeling claims.* The following is a list of submitted labeling claims which have been placed into Category III: "One spray keeps you comfortably dry all day," "Prolonged protection," "24-hour Protection," "Round the clock protection," "Long-lasting Protection," "Protects as you need it," "Reacts when you do," "Time-release," "Heat-Tension-Exercise. Fights all three kinds of wetness and odor."

REFERENCES

(1) OTC Volume 140027.

(2) Quatrale, R. P., K. L. Stoner, and C. B. Felger, "A Method for the Study of Emotional Sweating," Journal of the Society of Cosmetic Chemists, 28:91-101, 1977.

(3) OTC Volume 140033.

(4) Shelley, W. B., and H. J. Hurley, "Studies on Topical Antiperspirant Control of Axillary Hyperhidrosis," Acta Dermatovener, 55:241-260, 1975.

C. DATA REQUIRED FOR EVALUATION

The guidelines recommended in this document for the studies required to bring a Category III antiperspirant drug product into Category I are in accord with the present state of the art and do not preclude the use of any advances or improved technology in the future.

1. *Guidelines for products categorized as Category III because of inadequate data concerning their safety for the skin.* Skin reactions to topically applied agents are customarily thought to occur by one of two different mechanisms, either due to allergens or irritants.

It may be difficult to test for allergens prior to marketing because allergens depend for their effect on individual differences in susceptibility to sensitization (Refs. 1 through 4). Of the antiperspirant materials that have been reviewed, those in Category I are not sensitizers and the Panel feels that nothing more than the standard older tests (Refs. 1 and 2) should be required for other antiperspirants.

Primarily because of their low pH, however, all of the antiperspirant materials are capable of producing some skin irritation. Considering the irritating nature of these chemicals, it is fortunate that they are designed to be

applied to the axillary vault. Dermatologists have long recognized that hairy areas are relatively resistant to the development of contact dermatitis from either allergens or irritants.

Lanman, Elvers, and Howard (Ref. 3) and Elvers and Lanman (Ref. 4) have suggested the use of comparative controls in evaluating the tendency of agents to irritate the skin. This concept of comparing the irritancy of the test agent with the irritancy of other widely used agents makes special sense in evaluating antiperspirant products. For one thing, a single ingredient, aluminum chlorohydrate, so dominates the present antiperspirant market that comparative testing against aluminum chlorohydrate affords a sensible, practical technique of evaluation. For another, the use of known marketed products for comparison permits the rational introduction of risk/benefit considerations into the question of "how much?" risk.

At this point it might be noted that the Panel applied such considerations to the topical application of aqueous solutions of aluminum chloride, deeming them more irritating than the aluminum chlorhydrates but at the same time more effective and, therefore, placed them in Category I with an additional warning, *"Warning:* Some users of this product will experience skin irritation."

The following is, therefore, suggested as a technique for deciding whether ingredients now in Category III because of questions of skin irritancy could be reclassified into Category I, or into Category I with special irritancy warnings, or into Category II.

a. If the ingredient in final product form is no more irritating than aluminum chlorohydrate in the same vehicle using the Lanman technique, it is acceptable as Category I.

b. Ingredients in final product form which are more irritating in the comparative irritancy test than aluminum chlorohydrate in the same vehicle, must demonstate a significantly greater reduction in perspiration than the effectiveness standard.

c. If the ingredient in final product form although more irritating than aluminum chlorohydrate in the same vehicle, is more effective, it must bear an additional label warning of irritation, *"Warning:* Some users of this product will experience skin irritation," but may be classifed as Category I.

Summary of Guidelines for Converting Category III Ingredients to Category I

Category	Skin irritation (compared with aluminum chlorohydrate)	Effectiveness
I	No more irritating	20 pct.
I plus warning label	More irritating	Statistically significantly better than 20 pct.
II	do	Not statistically significantly better than 20 pct.

2. *Guidelines for tests to be done for aerosolized antiperspirant sprays to be classified as Category I.* Since the aluminum chlorohydrates are the predominant active ingredients in the antiperspirant market, the following guidelines are written specifically for them. Other aerosolized antiperspirant ingredients which are Category III should follow the same guidelines except that the test material will be the active ingredient used in the marketed formulation rather than the aluminum chlorohydrates as discussed below.

a. *Preliminary studies.* Prior to conducting the chronic animal inhalation study the following steps will be taken:

(1) *Determination of 1 times human exposure level.* The concentration, which shall be the 1 times level for the chronic animal inhalation study, of respirable aluminum to which persons are exposed during heavy usage of aerosolized antiperspirants in finished product form will be determined. Heavy usage is defined as the upper 95 percent tolerance limit (i.e., that concentration exceeded by only 5 percent of the population) of the distribution of individual respirable aluminum concentration values as determined by the following procedure.

A minimum of 20 subjects should participate in the test. They are given finished product samples of the aerosol antiperspirant to be used for a 1-week period prior to the exposure assay in order to permit them to become accustomed to the product. Subjects may not be selected for their pattern of use of antiperspirant products. Each subject should participate in a series of supervised normal use collections. The number of such collections (5 to 15) should be determined by the efficiency of the sampling instrument used; the objective being to collect a sufficient quantity of material to permit an accurate aluminum assay. For each of these collections the subject should be given a sample of the product and asked to spray both axillae according to his/her normal practice, and to remain in the test room (simulated home bathroom) for 15 minutes. During the application and 15-minute postapplication period the collection of respirable aluminum in the breathing zone should be continuous. Room air should be changed between subject runs, but not during the collection period.

Upon entering the test room the subject should be positioned near a respirable mass sampling device, with the collection port located in close proximity to the nose. The subject should be given an aerosol package and asked to apply the product to both axillae in his/her usual manner. Having had the opportunity in the pretest period to consult the label directions, the subject should receive no specific instructions on the test days with respect to distance, duration, or direction of product application. Air sampling of the breathing zone should be initiated at the start of product application and continued for 15 minutes. During the entire collection period a constant sampling flow rate should be maintained at the level appropriate for the specific instrument used.

At the end of each subject's scheduled series of 15-minute test exposures, the cumulative amount of aluminum in the collected respirable particles should be analyzed by a suitable analytical method. The quantity of aluminum so determined, divided by the product of exposure time and flow rate, represents that individual's respirable aluminum concentration value.

(2) *Determination of animal chamber conditions equivalent to human exposure.* Conditions of chamber flow rate and duration and frequency of actuation necessary to produce a chamber concentration equivalent to the human 1 times exposure levels and multiples thereof, should be determined.

(3) *Preparation of prototype product forms.* For the animal studies, prototype aerosolized antiperspirants should be formulated which are representative of marketed product forms and which, for each of these marketed forms, deliver the highest concentration of respirable aluminum in the breathing zone.

(4) *Pulmonary deposition of aluminum in animals.* Preliminary studies to relate exposure conditions to pulmonary deposition of aluminum from prototye product formulation and to provide the basis for the selection of dose levels and product formulation type to be used in the chronic animal inhalation studies should be conducted.

b. *Chronic animal inhalation study.*—(1) *Test material.* The Panel believes that to test every chemical known as aluminum chlorhydrate would be an enormous undertaking that is not necessary to assess the chronic pulmonary toxicity of aerosol products of these materials. The chemical properties of the aluminum chlorhydrates are very similar and all evidence presented to the Panel on the toxicity of these materials suggests that they have the same risk potential. The Panel concludes that it would be sufficient to carry out the proposed test on the aluminum chlorhydrate formulation which in the preliminary studies has been demonstrated to show the greatest potential for pulmonary deposition.

(2) *Animals.* The respiratory systems of lower animals are sufficiently different from humans that it is difficult to assign the burden of proof of safety to one animal species (Refs. 5 and 6). By selecting two animal species, a large and a small one, a check on species variation would be provided. The two groups of animals to be selected for this long-term study are the cynomolgus monkey for the larger test animal, and the syrian hamster, rabbit, or rat for the smaller one. There is a substantial body of knowledge on the respiratory characteristics of these animals which should facilitate the extrapolation of the experimental results to humans (Ref. 5).

(3) *Exposure conditions.* The animals should be whole-body exposed to the test material from aerosol packages for 15 minutes twice daily in the morning and evening for 7 days a week for the duration of the study. Air control animals should be exposed to filtered room air in a similar chamber with flow characteristics identical to those of the treatment groups.

(4) *Duration of test.* The duration of the inhalation test should be 2 years. The Panel took into its consideration a number of factors in deciding on this duration. The primary factors considered were the period necessary to induce in animals or humans lung disorders of the type that might develop from the chronic use of aerosol antiperspirants, the length of time these products are used by the public, and the practicality of carrying out a long-term inhalation study on laboratory animals. In the case of the smaller animal, 2 years represents its life expectancy, while for the larger animal it is a significant fraction of their lives.

(5) *Group design.* The following group design should be followed:

Group Design for Inhalation Study

Group [1]	Number of large animals	Number of small animals
Air control	8 (4 males, 4 females)	200 (100 males, 100 females).
1 times [2]	8 (4 males, 4 females)	100 (50 males, 50 females).
10 times	8 (4 males, 4 females)	100 (50 males, 50 females).
100 times	8 (4 males, 4 females)	100 (50 males, 50 females).
Recovery group [3]	8 (4 males, 4 females)	None.

[1] The five groups listed are the minimum suggested for this test, although additional levels may be added to provide a more precise estimate of the maximum no-effect level.
[2] The 1 times will be determined by the preliminary studies.
[3] The recovery group will be exposed at the 100 times level for 24 months and sacrificed at 27 months. No recovery group is included for the small animal due to animal longevity.

(6) *Chamber monitoring.* Total particulate, particulate size distribution, and active ingredient analysis should be monitored in the chambers during exposure.

(7) *Biological measurements.*—(i) *Body weights.* The small animals should be weighed weekly for the first 13 weeks and every 2 weeks thereafter. The large animals should be weighed weekly throughout the study.

(ii) *Daily observations.* All animals should be observed twice daily during exposure for pharmacologic activity and/or toxic effects.

(iii) *Serum chemistry.* Serum chemistry should be performed on the large animals prior to exposure and every 3 months thereafter.

(iv) *Hematology.* Hematology studies should be performed on the large animals prior to exposure and every 3 months thereafter.

(v) *Urinalysis.* Urinalysis studies should be performed on the large animals prior to exposure and every 3 months thereafter.

(vi) *Ophthalmoscopic examination.* The large animals should have an ophthalmoscopic examination prior to exposure and prior to sacrifice.

(8) *Post-mortem examination.*—(i) *Gross pathology.* (*a*) The following tissues from each animal should be removed at necropsy and weighed: Brain, thyroids, lungs, adrenals, liver, kidneys, spleen, gonads, and heart. Organ/body-weight and organ/brain-weight ratios should be calculated and analyzed statistically.

(*b*) The following tissues should be removed at necropsy and fixed: Brain (cerebellum, midbrain, cerebrum); stomach; esophagus; thyroid, parathyroid; pituitary; eyes; thymus; heart; spleen; bone marrow (sternum); skeletal muscle; pancreas; small intestine; large intestine; adrenals; cervical lymph node; mesenteric lymph node; liver; skin; gonads; peripheral nerve; kidneys; aorta (thoracic); respiratory system (external nares, larynx, lungs, nasopharynx, trachea, tonsils, cervical lymph nodes, nasal turbinates, peribronchial lymph nodes).

(ii) *Histopathology.* The following organs from the 100-times and the air control group should be prepared for histopathologic examination. If effects at the 100-times level are noted, lower concentration groups should be examined, in order, until a no-effect level is established: Brain, stomach, pituitary, eyes, thymus, heart, peripheral nerve, kidneys, esophagus, thyroids, small intestine, cervical lymph node, skeletal muscle, spleen, bone marrow (sternum), adrenals, pancreas, large intestine, mesenteric lymph node, gonads, liver, skin, respiratory system (external nares, lungs, larynx, nasopharynx, trachea, cervical lymph nodes, nasal turbinates, peribronchial lymph node, tonsils). All animals that die during the study should be autopsied and the tissues saved for histopathology. Animals that appear moribund during the study should be sacrificed and the tissues saved for histopathology.

(9) *Deposition of aluminum.* Aluminum deposition in the tracheal-bronchial-aveolar systems of the large and the small animals will be determined. The measured level of aluminum in the lungs of the test animals exposed to the highest concentration of aluminum salt must be significantly above background.

(10) *Good laboratory practice.* The study should be conducted in accordance with good laboratory practices.

3. *Guidelines for user perception test to be done for claims of "extra-effective" to be classified as Category I.* The test antiperspirant should be compared with a standard antiperspirant (20 percent sweat reduction in at least half of the subjects using the binomial test). The perception trial should be properly blinded and randomized such that half the subjects will receive the test antiperspirant under the left arm and the standard antiperspirant under the right arm, and the other half of the subjects will have treatment assignments in the reverse order. Sweating may be induced by either the hotroom or ambient method. At the end of the trial, subjects will be asked whether they felt that their right axilla or their left axilla was kept drier. Questions such as: "Which product did you prefer?" should not be allowed as the only question, because greater preference for one product

cannot be directly attributed to extra antiperspirant performance, but may be due to less stinging, perfume, etc.

After deleting the "no difference" response (i.e., those subjects who could not decide for either product) the binomial test with $H_0p=0.5$ may be applied. That is, if the null hypothesis of no difference between the two products may be rejected at the 0.05 level in the reduced sample (ties removed), then the manufacturer may make an extra effective claim.

This statistical test reduces to the simple procedure of counting the number of subjects who expressed a preference for the test antiperspirant as follows:

Total number of test subjects expressing a preference	Number of subjects required to express preference for the test antiperspirant
20	15
25	18
30	20
100	58

This test will demonstrate that with high probability at least 50 percent of the target population will experience the added benefit.

REFERENCES

(1) Shelanski, H. A., and M. V. Shelanski, "A New Technique of Human Patch Tests," Proceedings of the Scientific Section of the Toilet Goods Association, 19:46-49, 1953.

(2) Draize, J. H., "Dermal Toxicity," in "Appraisal of Safety of Chemicals in Foods, Drugs, and Cosmetics," Association of Food and Drug Officials of the United States, Texas State Department of Health, Austin, Tex., pp. 46-59, 1959.

(3) Lanman, B. M., W. B. Elvers, and C. S. Howard, "The Role of Human Patch Testing in a Product Development Program," in "Proceedings of the Joint Conference on Cosmetic Sciences," Washington, D.C., pp. 135-145, 1968.

(4) Elvers, W. B., and B. M. Lanman, "The Role of Human Patch Testing in a Product Development Program: An Update," in "Proceedings of the Joint Conference on Cosmetic Sciences," Washington, D.C., 1972, copy is included in OTC volume 140065.

(5) Jones, R. K., letter to G. E. Thompson, FDA, October 3, 1975, copy is included in OTC volume 140065.

(6) Transcript of open session, December 18, 1975.

The Food and Drug Administration has determined that this document does not contain an agency action covered by 21 CFR 25.1(b) and consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended by adding new part 350, to read as follows:

PART 350—ANTIPERSPIRANT PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
350.1 Scope.
350.3 Definitions.

Subpart B—Active Ingredients

350.10 Antiperspirants.

Subpart C—Testing Procedures

350.40 Effectiveness qualification test.
350.41 Test subjects.
350.42 Test conditions.
350.43 Test procedures.
350.44 Data treatment.

Subpart D—Labeling

350.50 Labeling of antiperspirant products.

AUTHORITY: Secs. 201, 502, 505, 701, 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) (5 U.S.C. 553, 554, 702, 703, 704).

Subpart A—General Provisions

§ 350.1 Scope.

An over-the-counter antiperspirant is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part 350 and each of the general conditions established in § 330.1 of this chapter.

§ 350.3 Definition.

Antiperspirant. A product which when applied topically will help reduce the production of perspiration (sweat).

Subpart B—Active Ingredients

§ 350.10 Antiperspirants.

The active ingredients of the product consist of the following within the dosage limit estiblished for each ingredient:

(a) *Aluminum chlorhydrates (aluminum chlorohydrate, aluminum dichlorohydrate, aluminum sesquichlorohydrate, aluminum chlorohydrex PG, aluminum sesquichlorohydrex PG, aluminum dichlorohydrex PG, aluminum chlorohydrex PEG, aluminum sesquichlorohydrex PEG, aluminum dichlorohydrex PEG).* Dosage is 25 percent or less concentration (calculated on an anhydrous basis) of a nonaerosol dosage form.

(b) *Aluminum zirconium chlorhydrates (aluminum zirconium trichlorohydrate, aluminum zirconium trichlorohydrex Gly, aluminum zirconium pentachlorohydrate, aluminum zirconium pentachlorohydrex Gly, aluminum zirconium tetrachlorohydrate, aluminum zirconium tetrachlorohydrex Gly, aluminum zirconium octachlorohydrate, aluminum zirconium octachlorohydrex Gly).* Dosage is 20 percent or less concentration (calculated on an anhydrous basis) of a nonaerosol dosage form.

(c) *Aluminum chloride.* Dosage is 15 percent or less concentration (calculated on the hexahydrate form) of an aqueous solution nonaerosol dosage form.

(d) *Buffered aluminum sulfate.* Dosage is 8 percent concentration of aluminum sulfate buffered with 8 percent concentration of sodium aluminum lactate in a nonaerosol dosage form.

Subpart C—Testing Procedures

§ 350.40 Effectiveness qualification test.

To qualify as effective, and antiperspirant in finished product form must meet or exceed the criteria established in this subpart. This qualification requirement applies to all formulae except those variants which differ from a qualified formula only with respect to color and/or perfume ingredients.

§ 350.41 Test subjects.

(a) Test subjects must be sufficiently representative in that the differences between the highest and lowest rates of sweating among the test subjects must exceed 600 mg/20 minutes/axilla. Information on the sweating rate will be obtained during pretreatment sweat collections or by sweat collections taken from the control axilla during treatment.

(b) Test subjects are required to abstain from the use of all antiperspirant materials for at least 1 week prior to pretreatment or treatment sweat collections.

§ 350.42 Test conditions.

Either hotroom or ambient conditions may be used to obtain gravimetric measurements of axillary perspiration rate.

(a) *Hotroom conditions.* (1) Test subjects are placed in a controlled environment (100° F and 35 percent relative humidity) to thermally induce perspiration.

(2) Care must be taken to insure that factors which are known to influence axillary sweating (i.e., air movement, mental, or emotional stimuli, position of the trunk and extremities) are properly controlled.

(b) *Ambient conditions.* Test subjects are allowed to go about their normal daily routines during the collection period.

§ 350.43 Test procedures.

(a) *Hotroom procedure.* (1) Treatments consists of the application of the test formulation to one axilla and the control formulation to the other axilla of each of the test subjects. (The control formulation is identical to the test formulation except that it is devoid of the active antiperspirant ingredient.)

(2) Half of the subjects will be randomly assigned to receive the test formulation under the left axilla and the control formulation under the right axilla, leaving the remaining subjects to be assigned oppositely.

(3) The quantity of each formulation applied to all the test subjects must reflect the amount that a typical person would apply under normal use conditions.

(4) Treatment applications are made once daily. It is important that the number of treatments preceding the collections of axillary perspiration for evaluation be recorded. At least one daily treatment should be carried out before the test.

(5) Preweighed absorbent pads are placed in both axillae of each of the test subjects.

(6) Test subjects are placed in the controlled environment for a period of from 10 to 30 minutes.

(7) Perspiration is collected on the absorbent pads, and the absorbent pads are again weighed at the end of the collection period.

(8) If a pretreatment evaluation is made to determine the ratio of right to left axillary sweating rate of each subject, the control formulation will be applied to both axillae of each test subject.

(b) *Ambient procedure.* The ambient procedure is performed in the same manner as the hotroom procedure except that the test subjects are allowed to go about their normal daily routines, and the collection period is for a period from 3 to 5 hours.

§ 350.44 Data treatment.

(a) Sweat reduction is defined for each subject by the formula:

$$\text{Percent sweat reduction} = \frac{C - T}{C} \times 100$$

where C is the raw milligram weight measure of moisture from the control axilla and T is the corresponding quantity from the test axilla.

Appropriate modifications of this formula are acceptable if pretreatment ratios of the right to left axillary sweating rate are determined.

(b) A statistical analysis of the percent sweat reduction values will be conducted by a binomial test. In statistical terminology:

$H_0 = P < 0.5$.
$H_A = P > 0.5$ ($\alpha = 0.05$, one sided).

where H_0 is the null hypothesis, P is the probability, H_A is the alternative hypothesis, and α is the predetermined arbitrary level of significance.

(c) A product qualifies as effective if the number of subjects having a percent sweat equal to or greater than 20 percent is equal to or exceeds the number of a given sample size as follows:

Total number of test subjects:	*Sweat reduction* [1]
20	15
35	18
30	20
100	58

[1] Minimum number of subjects required to have at least a 20-pct. sweat reduction.

(d) The test will demonstrate that with high probability at least 50 percent of the target population will obtain a sweat reduction of at least 20 percent.

Subpart D—Labeling

§ 350.50 Labeling of antiperspirant drug products.

(a) *Statement of identity.* The labeling of the product shall contain the established name of the drug, if any, and shall identify the product as an "antiperspirant."

(b) *Indications.* The labeling shall contain a statement under the heading "Indication(s)" that shall be limited to one or more of the following phrases: "Helps reduce wetness," "Helps reduce dampness," "Helps reduce perspiration." The labeling shall also include the following statement: "Products described as antiperspirants can be expected to produce at least a 20-percent reduction in underarm perspiration in at least half the users when applied once daily."

(c) *Warnings.* The labeling of the product shall contain the following warnings under the heading "Warnings":

(1) For products containing any antiperspirant ingredient identified in § 350.10: "Do not apply to broken skin. If a rash develops, discontinue use."

(2) For products containing aluminum chloride identified in § 350.10(c): "*Warning:* Some users of this product will experience skin irritation."

(d) *Directions.* The labeling of the product shall contain the following statement under the heading "Directions": "Apply to skin of underarms. Not to be used generally over the body."

Interested persons are invited to submit their comments in writing (preferably in quadruplicate and identified with the hearing clerk docket number found in brackets in the heading of this document) regarding this proposal on or before January 8, 1979. Such comments should be addressed to the Office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be accompanied by a memorandum or brief in support thereof. Additional comments replying to any comments so filed may also be submitted on or before February 7, 1979. Received comments may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the hearing clerk, Food and Drug Administration.

Dated: September 22, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-28083 Filed 10-6-78; 8:45 am]

federal register

TUESDAY, OCTOBER 10, 1978
PART IV



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIRWORTHINESS STANDARDS: RECIPROCATING AND TURBOPROPELLER POWER MULTIENGINE AIRPLANES

Increase in Approved Takeoff Weights and Passenger Seating Capacities

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 1, 21, 23, and 135]

[Docket No. 18315; Notice 78-14]

AIRWORTHINESS STANDARDS: RECIPROCATING AND TURBOPROPELLER POWERED MULTIENGINE AIRPLANES

Increase in Approved Takeoff Weights and Passenger Seating Capacities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new Special Federal Aviation Regulation (SFAR) and to amend the operating rules applicable to air taxi and commercial operators of small airplanes. This proposal would—(1) Prescribe additional airworthiness standards applicable to propeller driven multiengine small airplanes; and (2) depending on the standards those airplanes meet, allow their certification and operation at weights in excess of the current limitation of 12,500 pounds or with an increase in the number of passenger seats, or both. Adoption of these proposals would allow the desgn capabilities of these small airplanes to be more fully utilized.

DATES: Comments must be received on or before December 11, 1978.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24) Docket No. 18315, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Adolfo O. Astorga, Airworthiness Review Branch (AFS-910), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. In addition, commentators are encouraged to address the environmental, energy, economic, or social impact that might result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

The FAA requests that interested persons, when submitting comments, fully identify the proposal to which the comment relates.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed of a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

In notice No. 77-25, an advance notice of proposed rulemaking (42 FR 56702; October 27, 1977), the FAA requested recommendations concerning possible changes in certification requirements for certain small airplanes used by air taxi and commercial operators. Based on comments received in response to that advance notice, and upon further consideration, the FAA is proposing in this notice certification requirements and operating rules which will allow existing propeller driven airplanes to be better utilized under the Federal Aviation Regulations (FAR's).

In general, under the current FAR's relating to certification, airplanes are treated as either small or large. Numerous pilot, operating, and maintenance requirements of the FAR's utilize the same small and large distinction. In addition, the International Civil Aviation Organization (ICAO) uses this weight distinction. The distinction is based on the maximum certificated takeoff weight (MCTW) of the airplane. For airplanes with an MCTW of 12,500 pounds or less, the airplane is defined in § 1.1 of the FAR's as small. Airplanes with an MCTW of more than 12,500 pounds are defined as large.

The 12,500 pound weight distinction was adopted on April 9, 1953 (18 FR 2213; April 18, 1953). The weight distinction was based in part upon certain airplane and powerplant design considerations which were considered significant in 1953. Over the past 25 years, numerous additional operational factors have developed and must be considered in airplane design. Certain manufacturers have asserted that the 12,500 pound weight distinction is arbitrary and no longer provides an appropriate demarcation between small and large airplanes.

It should be noted that part 23 of the FAR's contains airworthiness standards for small airplanes. However, for those airplanes that meet the requirements of part 23 including amendment 23-10 (36 FR 2863; February 11, 1971), which is included in current part 23, the maximum passenger seating configuration is limited to 9 seats.

Many potential commentators to this notice, whose views the FAA invites, may not be familar with the regulatory procedure for type and airworthiness certification of aircraft and for their subsequent operation; therefore, a general overall perspective to this somewhat specialized area is provided below.

The certification process begins when the manufacturer of an aircraft of new design submits an application (along with certain aircraft drawings) to the FAA. Aircraft of new design must meet the airworthiness standards which were effective on the date that the application was filed and any additional standards found to be necessary because of novel or unusual design features. After an application is filed and the applicable standards are established, the aircraft design is tested by the manufacturer to show that it meets these standards. Once the airworthiness standards are met, a type certificate is issued to the manufacturer. The airworthiness standards which were complied with are incorporated as part of the type certificate and become the regulatory basis for the certificate. These standards normally continue to be applicable to individual aircraft built in accordance with the design. Individual aircraft are certified by the aircraft manufacturer to conform to the type design for which the type certificate was issued and are issued airworthiness certificates.

Section 610 of the Federal Aviation Act of 1958 (49 U.S.C. 1430) states that it is unlawful to operate a civil aircraft for which there is not currently in effect an airworthiness certificate or which is in violation of the terms of any such certificate. This statutory provision together with related provisions of the FAR's require that aircraft must be properly maintained. Proper maintenance includes recur-

rent inspections to insure continued conformity to the applicable type design. These provisions also require that the aircraft may not be operated in violation of its established limitations. One of these limitations is the maximum takeoff weight at which the aircraft design was certificated. Another is the maximum passenger seating configuration. Therefore, to change the MCTW or the maximum passenger seating configuration, the aircraft design must be recertificated in accordance with the applicable airworthiness standards.

An applicant for an airplane type certificate would be required, under current rules, to comply with the transport category requirements of part 25 of the FAR's if the maximum takeoff weight of its airplane exceeds 12,500 pounds or if the maximum passenger seating configuration exceeds 9 seats and the applicable airworthiness standards for the airplane includes amendment 23-10. Many commentators to the advance notice and petitioners for rulemaking and exemption have asserted that compliance with the transport category requirements of part 25 is too costly for small airplanes with a maximum takeoff weight very near 12,500 pounds. The commentators have asserted that many of the requirements of part 25 are intended for the very large air carrier airplanes such as the "wide-body" airplanes.

Recent requests for exemptions, or for a rule change, concerning this weight distinction have been made by operators that utilize airplanes with a MCTW of exactly or very near 12,500 pounds. These operators assert that these airplanes are capable of operating safely at maximum takeoff weights in exess of 12,500 pounds. In addition, these operators indicate that this weight limit has the effect of reducing safety margins by preventing the installation of additional navigational equipment and by preventing the carriage of increased fuel reserves. In this connection, the Acting Chairman of the National Transportation Safety Board (NTSB) recently informed the FAA that "* * * the Safety Board believes that a new airworthiness certification part designed specifically for this class of airplane which would be more stringent than the current FAR 23 supplemented by SFAR 23 (addiional airworthiness requirements met by certain airplanes in the past), but less costly than FAR 25, would be in the base interest of the safety of the flying public." Based upon these comments and requests and the claimed overall safety benefit, the FAA has determined that public comment should be invited upon a specific proposal to allow certification and operation at MCTW's in excess of 12,500 pounds which, if adopted, would be a step in the direction advocated.

In the light of the proposal to permit certification and operation of propeller driven multiengine airplanes at MCTW's in excess of 12,500 pounds, the FAA has reevaluated the current need for the 9 seat passenger capacity limit in part 23. Based on this evaluation, the FAA believes that on an interim basis, type certificates and changes to those certificates should be issued for propeller driven small airplanes in the normal category that have a passenger seating configuration, excluding pilot seats, of 10 seats or more (but not more than 19 seats), if compliance is shown with the airworthiness standards in part 23 together with the additional airworthiness requirements of appendix A of part 135 of the FAR's. The FAA's belief that only interim type certification rules are appropriate at this time is based on the FAA's continuing consideration of the need for, and substance and scope of, the new airworthiness certification part of the FAR's, recommended by comments received in response to notice No. 77-25 including that of the NTSB, for airplanes intended for use by commuter air carriers.

Discussion of Proposals

This proposal, consisting of a proposed new Special Federal Aviation Regulation (SFAR) and proposed changes to part 135, would allow either or both of the following:

(1) The certification of propeller driven multiengine small airplanes with a passenger seating configuration, excluding pilot seats, of 10 seats or more (but not more than 19 seats) that were originally type certificated in accordance with part 23 of the FAR's in effect on March 31, 1971 (the effective date of amendment 23-10) or later.

(2) The certification and operation, with appropriate restrictions and limitations, of propeller driven multiengine airplanes at maximum takeoff weights in excess of 12,500 pounds.

It should be noted that an application for certification under the proposed SFAR, would need to be filed with the FAA within 2 years after the effective date of the SFAR. Production of airplanes certificated, under the SFAR, with maximum takeoff weights in excess of 12,500 pounds, would be limited to 10 years after the effective date of the SFAR. This would be done by limiting to a 10 year period the privilege of obtaining original airworthiness certificates for airplanes type certificated under the SFAR. This 10 year period is intended to provide the time needed for the FAA to develop a new airworthiness certification part of the FAR's for airplanes intended for use by commuter air carriers and for airplane manufacturers to demonstrate compliance with the new part.

The restrictions and limitations which are included in the proposal are intended to ensure that each airplane meets the necessary airworthiness and operating standards and that international agreements are not violated. In this connection, the United States of America as a contracting State of ICAO, is under agreement to comply with the Convention on International Civil Aviation. Annex 8 to the convention contains international standards of airworthiness applicable to the certification of airplanes having a MCTW in excess of 5,700 kg (approximately 12,500 pounds). If an airplane does not comply with annex 8, under the convention, the airworthiness certificate must be endorsed with respect to the noncompliance and international navigation of the airplane is prohibited unless the countries entered agree. In part, the airworthiness standards in the proposed SFAR would establish a minimum level of safety for propeller driven multiengine airplanes with MCTWs in excess of 12,500 pounds and maximum weights without fuel of 12,500 pounds. It should be noted that the proposed airworthiness standards are not intended to and do not meet the annex 8 provisions. Therefore, airplanes certificated in accordance with the proposed SFAR, that operate at weights in excess of 5,700 kg, would be prohibited from international navigation unless specifically allowed by the countries of overflight. These airplane's airworthiness certificates would be appropriately endorsed. In addition, the international airman licensing and aircraft operating provisions in annexes 1 and 6 to the convention on International Civil Aviation must be met to operate these airplanes on international flights.

With respect to those airplanes certificated under amendment 23-10 that are to be certificated with a maximum passenger seating capacity in excess of 9 seats but with an MCTW not in excess of 12,500 pounds, compliance with appendix A of part 135 would be required under the proposed SFAR. For airplanes that are to be certificated with an MCTW in excess of 12,500 pounds, the airworthiness requirements of the proposed SFAR include appendix A of part 135, and additional structural fatigue, crashworthiness, and fire protection requirements. In developing these additional standards, the FAA has drawn upon the experience gained during the many years of operation of small airplanes.

The table below references the sources of the proposed additional structural fatigue, crashworthiness,

and fire protection requirements applicable to the certification of airplanes with MCTW's in excess of 12,500 pounds under the proposed SFAR. It should be noted that the various references in the chart to sections and parts of the Federal Aviation Regulations (14 CFR Chapter I) are those in effect on the date this NPRM was issued.

Subject	Section number in the SFAR	Source of the proposed airworthiness requirements
Fatigue evaluation of flight structure	5(b)	Based on sec. 28 of app. A of pt. 135 (see note below).
Door and exits	5(c)	Based on sec. 32 of app. A of pt. 135 and on § 25.783.
Fuel system lightning protection	5(d)	Same as § 23.954.
Cowlings	5(e)	Based on sec. 56 of app. A of pt 135.
Flammable fluid fire protection	5(f)	Same as § 25.863.
Compartment interiors	7	Based on § 25.853 and on Airworthiness Review Proposal Nos. 2-65 (40 FR 10810; Mar. 7, 1975) and 8-42 (40 FR 29419; July 11, 1975).
Landing gear	8	Same as § 25.721, for passenger seating configurations, excluding pilot seats, of 10 seats of more.
Fuel system components crashworthiness	9	Same as §§ 25.963(d), and 25.994.
Shutoff means	10	Same as § 23.1189.
Fire extinguishing systems	11	Based on § 25.1195.
Fire extinguishing agents	12	Same as § 25.1197.
Extinguishing agent containers	13	Same as § 25.1199.
Fire extinguishing system materials	14	Same as § 25.1201.
Acceptable test for showing compliance with secs. 7 (a)(1) thru (a)(5) of the SFAR.	Appendix	Based on app. F of pt. 25.

NOTE.—The requirements in sec. 5(b) of the proposed SFAR would apply to the vertical fin, horizontal stabilizer, and attaching structure, in addition to the wing, wing carrythrough, and attaching structure.

Appendix A of part 135 contains airworthiness requirements which when complied with in conjunction with part 23 provide a set of airworthiness standards that prescribe a level of safety exceeding that of part 23 alone. The additional standards proposed for airplanes to be certificated with an MTCW in excess of 12,500 pounds would provide for a level of safety improved over that provided by part 23 and appendix A. While the FAA is unaware of any propeller driven multiengine small airplane that currently meets appendix A of part 135 or the additional standards contained in the proposed SFAR, the FAA believes that the technology exists to perform modifications on a number of existing airplane types in order to meet the upgraded standards if so desired by the manufacturers or operators. Propeller driven multiengine small airplanes meeting these standards would provide a higher level of safety than similar airplanes currently in service.

Turbojet powered multiengine airplanes are not covered in the proposed SFAR because these high performance airplanes require more stringent airworthiness provisions than those applicable to propeller driven multiengine small airplanes. Therefore, at the present time, the FAA believes part 25 of the FAR's where applicable, continues to be an appropriate standard for these airplanes.

It should also be noted that the intent of the proposed SFAR is to allow airplanes certificated in accordance with the SFAR to operate under parts 91 and 135. Additional revisions to part 135, as revised in this issue of the FEDERAL REGISTER, are proposed below to allow operation under that part.

The FAA believes that the proposal, if adopted, would allow air taxi, commercial, and general aviation operators to more fully utilize the design capabilities of propeller driven multiengine small airplanes that are amenable to an expansion of their capabilities with no adverse effect on safety. In this connection, as indicated, the proposed SFAR provides additional airworthiness requirements and operating limitations. In addition, the FAA believes that the proposed SFAR in providing for an increase in MCTW will allow the operators to—(1) Install additional navigation equipment; (2) carry increased fuel reserves; and (3) install additional public conveniences, such as lavatories and food galleys. Furthermore, the proposal has the potential of reducing costs to the traveling public by allowing more efficient operation of these airplanes.

REQUEST FOR ECONOMIC DATA

A number of comments were received in response to advance notice No. 77-25 concerning the economic impact of imposing different categories of type certification requirements on commuter airplanes. However, because of the general nature of the questions presented in that advance notice, the FAA is convinced that additional data is required to determine the economic impact of the proposal covered in this notice.

While the FAA does not believe that this proposal will have any detrimental economic impact, it is aware that detailed economic impact information is exclusively in the possession of airplane manufacturers and commuter operators. Accordingly, comments concerning the economic impact of the proposal are strongly encouraged.

In submitting their comments, each operator and manufacturer should specify the proposal's anticipated economic effect on its operations or production. If an organization desires to submit economic data on behalf of groups of operators or manufacturers, an adequate breakdown of the anticipated effect on each member of the group is requested. Additionally, with respect to potential positive economic benefits operators and manufacturers should provide realistic comparisons of current airplane operating and airplane purchase costs with those that could result from the proposal. Also, airplane modification costs related to the proposal should be presented, and examples of potential positive monetary benefits to commuter passengers are also urged.

For those commentators that desire changes in the airworthiness standards included in the proposal, their comments should contain detailed cost-benefit analysis data. The analysis should specify the steps taken and the assumptions made in its preparation. In this connection, it should be emphasized that unsupported assertions as to the anticipated economic impact of this proposal will be given limited weight.

THE PROPOSED AMENDMENTS

Accordingly, the Federal Aviation Administration proposes to amend the Federal Aviation Regulations (14 CFR Chapter I) as follows: 1. By adding the following Special Federal Aviation Regulation:

SPECIAL FEDERAL AVIATION REGULATION NO.----

1. APPLICABILITY

(a) Contrary provisions of parts 21 and 23 of the Federal Aviation Regulations notwithstanding, an applicant is entitled to an amended or supplemental type certificate in the normal category for a reciprocating or turbopropeller powered multiengine small airplane originally type certificated in accordance with part 23 of the Federal Aviation Regulations in effect on March 31, 1971, or later, that is to be

certificated with a passenger seating configuration, excluding pilot seats, of 10 seats or more (but not more than 19 seats) if the applicant complies with—

(1) The regulations incorporated in the type certificate; and

(2) The requirements of appendix A of part 135 of the Federal Aviation Regulations in effect on (the date this proposed SFAR was issued).

(b) Contrary provisions of parts 1, 21, 23, 91, 121, and 135 of the Federal Aviation Regulations notwithstanding, an applicant is entitled to an amended or supplemental type certificate in the normal category for a reciprocating or turbopropeller powered multiengine airplane that is to be certificated with a maximum takeoff weight in excess of 12,500 pounds and a maximum zero fuel weight not in excess of 12,500 pounds if the applicant complies with—

(1) The regulations incorporated in the type certificate;

(2) The requirements of appendix A of part 135 of the Federal Aviation Regulations in effect on (the date this proposed SFAR was issued) with the exceptions specified in section 5 of this Special Federal Aviation Regulation; and

(3) The additional requirements specified in sections 7 through 14 of this Special Federal Aviation Regulation.

(c) Contrary provisions of part 1 of the Federal Aviation Regulations notwithstanding, an airplane certificated under paragraph (b) of this section is defined as a small airplane for purposes of parts 21, 23, 36, 121, and 135 of the Federal Aviation Regulations and a large airplane for purposes of parts 61 and 91. Compliance with the small airplane provisions of part 36 of the Federal Aviation Regulations must be shown at the maximum certificated takeoff weight approved under this Special Federal Aviation Regulation.

2. ELIGIBILITY

Any person may apply for a supplemental type certificate (or an amended type certificate in the case of a type certificate holder) under this Special Federal Aviation Regulation.

3. PRODUCTION LIMITATION

An amended or suplemental type certificate issued pursuant to section 1(b) of this Special Federal Aviation Regulation is effective for the purpose of obtaining an original airworthiness certificate, until (a date 10 years after the effective date of this SFAR) unless the type certificate is sooner surrendered, suspended, revoked, or terminated.

4. RESTRICTIONS

For airplanes certificated under section 1(b) of this Special Federal Aviation Regulation—

(a) The maximum zero fuel weight of the airplane must be established as an operating limitation and may not exceed 12,500 pounds.

(b) The airworthiness certificate shall be endorsed "This airplane at weights in excess of 5,700 kg does not meet the airworthiness requirements of ICAO, as prescribed by annex 8 of the convention on International Civil Aviation."

5. EXCEPTIONS

For purposes of obtaining an amended or supplemental type certificate under section 1(b) of this Special Federal Aviation Regulation the following exceptions apply. All references in this section to specific sections of parts 23 and 25 of this chapter are to those in effect on (the date this proposed SFAR was issued):

(a) Compliance with section 1 of appendix A of part 135 of the Federal Aviation Regulations is not required.

(b) In lieu of compliance with section 28 of appendix A of part 135 of the Federal Aviation Regulations, comply with the following:

Fatigue evaluation of flight structure. Unless it is shown that the structure, operating stress levels, materials, and expected use are comparable from a fatigue standpoint to a similar design which has had substantial satisfactory service experience, the strength, detail design, and the fabrication of those parts of the wing, wing carrythrough, vertical fin, horizontal stabilizer, and attaching structure whose failure would be catastrophic must be evaluated under either—

(a) A fatigue strength investigation in which the structure is shown by analysis, tests, or both, to be able to withstand the repeated loads of variable magnitude expected in service; or

(b) A fail-safe strength investigation in which it is shown by analysis, tests, or both, that catastrophic failure of the structure is not probable after fatigue, or obvious partial failure, of a principal structural element, and that the remaining structure is able to withstand a static ultimate load factor of 75 percent of the critical limit load factor at V_c. These loads must be multiplied by a factor of 1.15 unless the dynamic effects of failure under static load are otherwise considered.

(c) In lieu of compliance with section 32 of Appendix A of Part 135 of the Federal Aviation Regulations, comply with the following:

Doors and exits. The airplane must meet the requirements of §§ 23.783 and 23.807(a)(3), (b), and (c) of this chapter, and in addition the following requirements:

(a) Each cabin must have at least one easily accessible external door.

(b) There must be a means to lock and safeguard each external door against opening in flight (either inadvertently by persons or as a result of mechanical failure or failure of a single structural element). Each external door must be operable from both the inside and the outside, even though persons may be crowded against the door on the inside of the airplane. Inward opening doors may be used if there are means to prevent occupants from crowding against the door to an extent that would interfere with the opening of the door. The means of opening must be simple and obvious and must be arranged and marked so that it can be readily located and operated, even in darkness. Auxiliary locking devices may be used.

(c) Each external door must be reasonably free from jamming as a result of fuselage deformation in a minor crash.

(d) Each external door must be located where persons using them will not be endangered by the propellers when appropriate operating procedures are used.

(e) There must be a provision for direct visual inspection of the locking mechanism by crewmembers to determine whether external doors, for which the initial opening movement is outward (including passenger, crew, service, and cargo doors), are fully locked. In addition, there must be a visual means to signal to appropriate crewmembers when normally used external doors are closed and fully locked.

(f) Cargo and service doors not suitable for use as an exit in an emergency need only meet paragraph (e) of section 5(c) of this regulation and be safeguarded against opening in flight as a result of mechanical failure or failure of a single structural element.

(g) The passenger entrance door must qualify as a floor level emergency exit. If an integral stair is installed at such a passenger entry door, the stair must be designed so that when subjected to the inertia forces specified in § 23.561 of this chapter, and following the collapse of one or more legs of the landing gear, it will not interfere to an extent that will reduce the effectiveness of emergency egress through the passenger entry door. Each additional required emergency exit except floor level exits must be located over the wing or must be provided with acceptable means to assist the occupants in descending to the ground. In addition to the passenger entrance door—

(1) For a total seating capacity of 15 or less, an emergency exit, as defined in § 23.807(b) of this chapter, is required on each side of the cabin;

(2) For a total seating capacity of 16 through 23, three emergency exits, as defined in § 23.807(b) of this chapter, are required with one on the same side as the door and two on the side opposite the door; and

(3) For a total seating capacity in excess of 23, the number of emergency exits and their kind and distribution must be approved by the Administrator.

(h) An evacuation demonstration must be conducted utilizing the maximum number of occupants for which certification is desired. It must be conducted under simulated night conditions utilizing only the emergency exits on the most critical side of the aircraft. The participants must be representative of average airline passengers with no prior practice or rehearsal for the demonstration. Evacuation must be completed within 90 seconds.

(i) Each emergency exit must be marked with the word "Exit" by a sign which has white letters 1 inch high on a red background 2 inches high, be self-illuminated or

independently internally electrically illuminated, and have a minimum luminescence (brightness) of at least 160 microlamberts. The colors may be reversed if the passenger compartment illumination is essentially the same.

(j) Access to window type emergency exits must not be obstructed by seats or seat backs.

(k) The width of the main passenger aisle at any point between seats must equal or exceed the values in the following table:

Total seating capacity	Minimum main passenger aisle width	
	Less than 25 inches from floor	25 inches and more from floor
10 through 23	9 inches	15 inches.
Over 23	15 inches	20 inches.

(d) In lieu of compliance with section 45 of appendix A 135 of part of the Federal Aviation regulations, comply with § 23.954 of this chapter.

(e) In lieu of compliance with section 56 of appendix A of part 135 of the Federal Aviation regulations, comply with the following:

Cowlings. The airplane must be designed and constructed so that no fire originating in any engine compartment can enter, either through openings or by burning through external skin, any other region where it would create additional hazards."

(f) In lieu of compliance with section 57 of appendix A of part 135 of the Federal Aviation regulation, comply with § 25.863 of this chapter.

6. Additional Requirements—General

The additional requirements specified in sections 7 through 14 apply to the certification of airplanes pursuant to section 1(b) of this special Federal Aviation regulation.

7. Compartment Interiors

(a) Materials (including finishes or decorative surfaces applied to the materials) used in each compartment occupied by the crew or passengers must meet the following test criteria as applicable:

(1) Interior ceiling panels, interior wall panels, partitions, galley structure, large cabinet walls, structural flooring, and materials used in the construction of stowage compartments (other than underseat stowage compartments and compartments for stowing small items such as magazines and maps) must be self-extinguishing when tested vertically in accordance with the applicable portions of the appendix to this regulation, or other approved equivalent methods. The average burn length may not exceed 6 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 3 seconds after falling.

(2) Floor covering, textiles (including draperies and upholstery), seat cushions, padding, decorative and nondecorative coated fabrics, leather, trays and galley furnishings, electrical conduit, thermal and acoustical insulation and insulation covering, air ducting, joint and edge covering, cargo compartment liners, insulation blankets, cargo covers, transparencies, molded and thermoformed parts, air ducting joints, and trim strips (decorative and chafing), that are constructed of materials not covered in paragraph (a)(4) of this section, must be self extinguishing when tested vertically in accordance with the applicable portions of the appendix to this regulation, or other approved equivalent methods. The average burn length may not exceed 8 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 5 seconds after falling.

(3) Motion picture film must be safety film meeting the standard specification for safety photographic film ph 1.25 (available from the United States of America Standards Institute, 10 East 40th Street, New York, N.Y. 10018), or an FAA-approved equivalent. If the film travels through ducts, the ducts must meet the requirements of paragraph (a)(2) of this section.

(4) Acrylic windows and signs, parts constructed in whole or in part of elastomeric materials, edge lighted instrument assemblies consisting of two or more instruments in a common housing, seat belts, shoulder harnesses, and cargo and baggage tiedown equipment, including containers, bins, pallets, etc., used in passenger or crew compartments, may not have an average burn rate greater than 2.5 inches per minute when tested horizontally in accordance with the applicable portions of the appendix of this regulations, or other approved equivalent methods.

(5) Except for electrical wire and cable insulation, and for small parts (such as knobs, handles, rollers, fasteners, clips, gromments, rub strips, pulleys, and small electrical parts) that the Administrator finds would not contribute significantly to the propagation of a fire, materials in items not specified in paragraphs (a)(1) through (a)(4) of this section may not have a burn rate greater than 4 inches per minute when tested horizontally in accordance with the applicable portions of the appendix of this regulation, or other approved equivalent methods.

(b) If smoking is to be prohibited, there must be a placard so stating, and if smoking is to be allowed—

(1) There must be an adequate number of self-contained, removable ashtrays, and

(2) Where the crew compartment is separated from the passenger compartment, there must be at least one sign (using either letters or symbols) notifying all passengers when smoking is prohibited. Signs which notify when smoking is prohibited must—

(i) Be legible to each passenger seated in the passenger cabin under all probable lighting conditions, and

(ii) When illuminated, be so constructed that the crew can turn them on and off.

(c) Each disposal receptable for towels, paper, or waste must be fully enclosed and constructed of at least fire resistant materials, and must contain fires likely to occur in it under normal use. The ability of the disposal receptacle to contain those fires under all probable conditions of wear, misalignment, and ventilation expected in service must be demonstrated by test. A placard containing the legible words "No Cigarette Disposal" must be located on or near each disposal receptable door.

(d) Lavatories must have "No Smoking" or "No Smoking in Lavatory" placards located conspicuously on each side of the entry door, and self-contained removable ashtrays located conspicuously on or near the entry side of each lavatory door, except that one ashtray may serve more than one lavatory door if it can be seen from the cabin side of each lavatory door served. The placards must have red letters at least one-half inch high on a white background at least one inch high. (A "No Smoking" symbol may be included on the placard).

(e) There must be at least one hand fire extinguisher conveniently located in the pilot compartment.

(f) There must be at least one hand fire extinguisher conveniently located in the passenger compartment.

8. Landing Gear

Comply with §§ 25.721(a)(2), (b), and (c) of this chapter in effect on (the date this proposed SFAR was issued).

9. Fuel System Components Crashworthiness

Comply with §§ 25.963(d) and 25.994 of this chapter in effect on (the date this proposed SFAR was issued).

10. Shutoff Means

Comply with § 23.1189 of this chapter in effect on (the date this proposed SAFR was issued).

11. Fire Extinguishing Systems

(a) Except for combustor, turbine, and tail pipe sections of turbine engine installations that contain lines or com-

ponents carrying flammable fluids or gases for which it is shown that a fire originating in these sections can be controlled, there must be a fire extinguisher system serving each engine compartment.

(b) The fire extinguishing system, the quantity of the extinguished agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used for auxiliary power units, fuel burning heaters, and other combustion equipment. For other engine compartments two discharges must be provided each of which produce adequate agent concentrations. It must be possible to direct each of these discharges to any main engine installation.

(c) The fire-extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

12. FIRE EXTINGUISHING AGENTS

Comply with § 25.1197 of this chapter in effect on (the date this proposed SAFR was issued).

13. EXTINGUISHING AGENT CONTAINERS

Comply with § 25.1189 of this chapter in effect on (the date this proposed SFAR was issued).

14. FIRE EXTINGUISHING SYSTEM MATERIALS

Comply with § 25.1201 of this chapter in effect on (the date this proposed SFAR was issued).

15. EXPIRATION

This special Federal Aviation regulation terminates on (a date two years after the effective date of this SFAR), unless sooner rescinded or superseded.

APPENDIX

ACCEPTABLE TEST PROCEDURES FOR SHOWING COMPLIANCE WITH SECTIONS 7(A)(1) THRU (A)(5) OF THIS REGULATION

(a) *Conditioning.* Specimens must be conditioned to 70 degrees F (plus or minus 5 degrees) and at 50 percent relative humidity (plus or minus 5 percent) until moisture equilibrium is reached, or for 24 hours. Only one specimen at a time may be removed from the conditioning environment before subjecting it to the flame.

(b) *Specimen configuration.* Materials must be tested either as a section cut from a fabricated part as installed in the airplane or as a specimen simulating a cut section, such as a specimen cut from a flat sheet of the material or a model of the fabricated part. The specimen may be cut from any location in a fabricated part; however, fabricated units, such as sandwich panels may not be separated for test. The specimen may not be thicker than the minimum thickness to be qualified for use in the airplane, except that: (1) Thick foam parts, such as seat cushions, must be tested in ½-inch thickness; and (2) When showing compliance with section 7(a)(4) of this regulation for materials used in small parts that must be tested, the materials must be tested in no more than ⅛-inch thickness. In the case of fabrics, both the warp and fill direction of the weave must be tested to determine the most critical flammability conditions. When performing the tests prescribed in paragraphs (d) and (e) of this appendix, the specimen must be mounted in a metal frame so that: (1) in the vertical tests of paragraph (d), the two long edges and the upper edge are held securely; (2) in the horizontal test of paragraph (e), the two long edges and the edge away from the flame are held securely; (3) the exposed area of the specimen is at least 2 inches wide and 12 inches long, unless the actual size used in the airplane is smaller; and (4) the edge to which the burner flame is applied may not consist of the finished or protected edge of the specimen but must be representative of the actual cross-section of the material or part installed in the airplane.

(c) *Apparatus.* Tests must be conducted in a draft-free cabinet in accordance with Federal Test Method Standard 191 method 5903 (revised method 5902) for the vertical test, or method 5906 for the horizontal test (available from the General Services Administration, Business Service Center, Region 3, Seventh and D Streets SW., Washington, D.C. 20407) or other approved equivalent methods. Specimens which are too large for the cabinet must be tested in similar draft-free conditions.

(d) *Vertical test, in compliance with sections 7(a)(1) and (a)(2) of this regulation.* A minimum of three specimens must be tested and the results averaged. For fabrics, the direction of weave corresponding to the most critical flammability conditions must be parallel to the longest dimension. Each specimen must be supported vertically, the specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch i.d. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1,550 degrees F The lower edge of the specimen must be ¾-inch above the top edge of the burner The flame must be applied to the center line of the lower edge of the specimen. For materials covered by section 7(a)(1) of this regulation, the flame must be applied for 60 seconds and then removed. For materials covered by section 7(a)(2) of this regulation, the flame must be applied for 12 seconds and then removed. Flame time, burn length, and flaming time of dripping, if any, must be recorded.

(e) *Horizontal test, in compliance with sections 7(a)(3) and (a)(4) of this regulation.* A minimum of three specimens must be tested and the results averaged. Each specimen must be supported horizontally. The exposed surface when installed in the airplane must be face down for the test. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch i.d. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1,550 degrees. The specimen must be positioned so that the edge being tested is ¾-inch above the top of, and on the center line of, the burner The flame must be applied for 15 seconds and then removed. A minimum of 10 inches of the specimen must be used for timing purposes, approximately 1½ inches must burn before the burning front reaches the timing zone, and the average burn rate must be recorded.

(f) *Burn length.* Burn length is the distance from original edge to the farthest evidence of damage to the test specimen due to flame inpingement, including areas of partial or complete consumption, charring, or embrittlement, but not including areas sooted, stained, warped, or discolored, nor areas where material has shrunk or melted away from the heat source.

2. By revising § 135.169 by deleting the word "or" at the end of § 135.169(b)(3); by deleting the period at the end of § 135.169(b)(4) and inserting a semicolon and the word "or" in its place; by adding a new § 135.169(b)(5) and by revising § 135.169(c)(2) to read as follows:

§ 135.169 Additional airworthiness requirements.

* * * * *

(b) * * *

(5) In the normal category and complies with (the SFAR proposed in this notice).

(c) * * *

(2) An airplane that complies with—

(i) Appendix A of this part provided that its passenger seating configuration, excluding pilot seats, does not exceed 19 seats; or

(ii) (The SFAR proposed in this notice).

3. By redesignating § 135.399 as § 135.399(a) and by adding a new § 135.399(b) to read as follows:

§ 135.399 Small nontransport category airplanes performance operating limitations.

* * * * *

(b) No person may operate an airplane that is certificated under § 135.169(b)(5) unless that person complies with the landing limitations prescribed in §§ 135.385 and 135.387 of this part.

(Secs. 313(a), 601, 603, and 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, and 1424); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45.)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C. on September 26, 1978.

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

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PART V



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16097; Amdt. Nos. 121-147, 127-35, and Rev. of Part 135]

REGULATORY REVIEW PROGRAM; AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments substantially revise requirements for operations by persons holding air taxi/commercial operator (ATCO) operating certificates issued by the FAA. They will result in a higher level of safety and greater operational flexibility. They are necessary to keep the FAA's regulation of this vital segment of the industry consistent with the state-of-the-art from both a technological and operating standpoint. These amendments respond to the demand for commuter and air taxi operators to operate larger and more complex aircraft.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Sullivan, Chief, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-755-8715.

SUPPLEMENTARY INFORMATION:

History

These amendments are based on notice of proposed rulemaking 77-17 (42 FR 34390; Aug. 29, 1977). Notice 77-17 also included five proposed amendments to current part 135 originally proposed in notice 76-28 (41 FR 56280; Dec. 27, 1976). Notice 77-17 also considered and disposed of the petition of Air Illinois, Inc., Golden West Airlines, Inc., and Swift Aire Lines, Inc., to amend part 135 (docket No. 15733).

After notice 77-17 was issued, notice 77-17A (42 FR 56702; Oct. 27, 1977) withdrew proposed § 135.169(e). The same day, advance notice of proposed rulemaking 77-25 (42 FR 56702; Oct. 27, 1977) requested comments on possible changes in the certification requirements for certain small airplanes used by air taxi operators and commercial operators. Advance notice 77-25 will be disposed of in a separate rulemaking action.

All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. Except for the changes discussed below, these amendments and the reasons for their adoption are the same as those stated in notices 76-28 and 77-17.

Public Participation

The FAA completed the last general upgrading of part 135 in amendment 135-12 issued on November 26, 1969 (34 FR 19130; Dec. 3, 1969). That amendment took effect on April 1, 1970. Operating experience and changes in the air taxi industry soon required another effort to further improve part 135. The FAA began working on a project to propose further regulatory changes in May 1972. By the spring of 1976, the basic drafting of this massive project to amend part 135 was finished. That draft included recommendations the National Transportation Safety Board made in its "Air Taxi Safety Study" of September 27, 1972. The draft also included proposals received during the operations review program that was announced in February 1975.

During a "listening session" with the Commuter Airline Association of America on June 8, 1976, a review conference was suggested to receive ideas from anybody who had an interest and that those ideas be used in developing a notice of proposed rulemaking to amend part 135. Because of the merit of that suggestion, the FAA prepared proposals which served as a basis for discussions at the conference. Notice 76-18 announcing the part 135 Regulatory Review Conference was issued on September 9, 1976 (41 FR 38778; Sept. 13, 1976).

The conference was held at Denver, Colo., for 4 days beginning November 8, 1976. More than 400 persons attended the conference and 112 proposals were discussed. More than 100 written comments were received subsequent to the conference. After reviewing the conference transcripts and the written comments and suggestions, changes were made to conference proposals. Many were withdrawn, others were substantially modified and several new proposals were developed.

Notice 77-17 was issued on August 19, 1977. Comments were requested by November 28, 1977. More than 1,600 comments were received and numerous changes are made in response to them. They are discussed in detail below.

The revision and upgrading of part 135 is the largest, most complex safety rulemaking project that the Federal Aviation Administration has ever undertaken. We wish to acknowledge and express our appreciation for the participation of, and assistance from, members of the public, individual pilots, mechanics, flight attendants, and other aviation personnel, individual ATCO certificate holders, consumer interest groups, labor organizations, air taxi and commuter industry organizations, State governments, State and Federal legislators, manufacturers, the military services, transportation organizations, other agencies of the Federal Government and others too numerous to mention. Each commenter made our product better and the rules more workable.

Reasons for Revising Part 135

The primary objective of this revision of part 135 is to upgrade the level of safety for operations conducted by commuter air carriers,[1] on-demand air taxi operators and commercial operators. While the comments on each rule are discussed later in this preamble, the principal reasons for this action are summarized here.

First, in recent years the commuter air carrier industry has become an increasingly important part of the Nation's air transportation system. These carriers have experienced a strong 10.3 percent average annual passenger traffic increase since 1970. Most recently, Civil Aeronautics Board statistics for 1977 compared to 1976 show the number of passengers carried by commuters increased 16.5 percent to 8.5 million, passenger miles increased 22.8 percent to 946.2 million and passenger markets served increased 12.9 percent to 1,594. One factor contributing to the increase is growing public acceptance of this segment of the industry. Another factor is a decline in the service to the smaller cities rendered by trunk and local service air carriers. Since 1960, these carriers have discontinued service to 179 points. The commuter air carriers have stepped in and provided service at 96 of these points. Many commuter passengers connect with trunk, regional and local service air carriers. They expect to travel at a level of safety substantially similar to part 121, the safety rules applicable to air carriers. This revision of part 135 provides that level of safety.

Second, in the National Transportation Safety Board's "Air Taxi Safety Study," the Board analyzed accidents involving part 135 certificate holders.

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[1] Under § 298.2(f) of the Civil Aeronautics Board (CAB) regulations (14 CFR 298.2(f)), " 'Commuter air carrier' means, an air taxi operator which (1) performs at least five round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and places between which such flights are performed, or (2) transports mail by air pursuant to contract with the United States Postal Service."

That study included specific recommendations from the Board to the FAA intended to upgrade safety in part 135. The Board's recommendations were considered and many were included in notice 77-17. There has been some improvement in the part 135 accident rate since the Board completed its 1972 report. The Board's statistics show that the fatal accident rate for each 100,000 hours flown still remains higher than the rate achieved by certificated route air carriers under part 121. Indeed, in 1976 the air taxi fatal accident rate increased significantly from the 1975 rate. The Board's preliminary statistics for 1977 indicate that the fatal accident rate remains above the 1975 rate. This revision of part 135 should reduce the accident rates in air taxi operations.

Third, many part 135 certificate holders have pointed up a need for greater operational flexibility in the size of aircraft they operate under part 135. The new rule raises the part 135 size limit to aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less. This is the same size aircraft which certificate holders have been able to operate under the blanket exemption authority of part 298 of the Economic Regulations of the Civil Aeronautics Board (14 CFR Part 298). This increase allows certificate holders to operate larger and more complex aircraft capable of flying higher and faster with increased passenger loads. In turn, this should result in greater productivity. Revised part 135 adopts the changes necessary to deal with the operation of these larger, more complex aircraft. The FAA is aware that the CAB is considering changes to the aircraft size limits under part 298 to 60 seats and 18,000 pounds payload capacity. Aircraft operating within these capacity levels are already covered by part 121. To date, there has been no showing that there is any requirement for the FAA to hold the operation of these aircraft to a lesser standard. The FAA will continue to monitor the commuter/air taxi operating environment and, if a reasonable case is found for some changes as a result of the CAB's proposed amendments, an appropriate rulemaking proceeding will be initiated.

Fourth, since 1969 when part 135 was last upgraded, there has been substantial increase in the number of certificate holders conducting operations in small airplanes carrying 10 or more passengers and in multiengine turbine-powered airplanes. For example, in the 12-month period ending June 30, 1977, the number of turbine-powered aircraft operated by commuter air carriers grew 61.7 percent from 225 to 364. A characteristic of the air taxi business is that operations are conducted to a broad spectrum of airports ranging from remote, infrequently used airports, to those which are high density air carrier facilities. Aircraft operated under part 135 must be adequately equipped and maintained and pilots must be properly trained to meet these varied circumstances.

Highlights of Revised Part 135

A major goal of this revision of part 135 is to provide the passenger traveling on an on-demand air taxi flight or a commuter air carrier flight with a level of safety comparable to part 121, considering the differences between these operations, the costs versus benefits and the overall feasibility of implementation. Balancing the safety considerations, the public interest, the economic consequences, and the feasibility of the rule requires that hard judgments be made. One of these judgments is whether to apply the upgraded standards equally to all aircraft types and all operations. The extensive public comment received by the FAA plus the FAA's own experience has shown this not to be practicable. The complexity of the problem stems in large measure from the varied nature of the aircraft operated and markets served by the commuter/air taxi market. To give but one example, there are approximately 25 and 118 aircraft types, respectively, operated by commuters and on-demand operators. This compares to approximately 13 aircraft types being operated by the trunk and local service carriers. In recognition of these facts, the FAA has designed a rule which, where possible, takes account of the varied nature of the part 135 operations.

Since both commuter and air taxi operations are governed by part 135, it is useful to analyze the safety impact on these two different types of operations separately. Focusing on the commuter air carrier, largely because of the scheduled nature of the operator's service and its increasingly important role as a replacement carrier for local service and trunk carriers, the significant safety impact of this rule is readily apparent. Commuters account for over 68 percent of all the revenue passenger miles (RPM's) operated by part 135 certificate holders.

Based upon the FAA's analysis of RPM's operated by commuters in 1976, the FAA has determined that under this rule approximately 75 percent of the RPM's flown by commuters will be in aircraft having either weather radar or thunderstorm detection equipment. Approximately 97 percent of the total RPM's flown by commuters will be in aircraft flown by a pilot in command having an air transport pilot certificate. To give but one other example, 67 percent of the commuter RPM's will be in aircraft maintained to part 121 type maintenance programs. The remaining 33 percent, all involving aircraft of nine or less seats, will be subject to more stringent maintenance programs than currently required. As the commuters continue to upgrade and modernize their fleets, these percentages will likely increase. A chart illustrating the impact of this safety upgrade is set forth in appendix A.

There are many factors that lead to differences in impact levels between the various rule changes. One of the principal reasons is the distinction in the final rules between aircraft capable of carrying 10 or more passengers and those capable of transporting only nine or less passengers. In each instance, the FAA has taken into account the relative complexity of the aircraft from an operational and maintenance standpoint with a view toward achieving levels of safety equal to part 121 to the maximum extent possible. The 10-passenger seating configuration point differentiation represents the FAA's best judgment, after considerable study, of the most realistic point at which to design differing standards.[2]

It is significant to note the increasing trend in the use of higher capacity aircraft. In 1976, commuter air carriers operated 344 airplanes having 10–30 seats. In 1971, only 175 airplanes having 10–30 seats were operated by commuter air carriers. This represents a 97-percent increase between 1971 and 1976.

Turning to individual items, revised part 135 requires aircraft that are type certificated for 10 or more passenger seats to be maintained under a continuous airworthiness maintenance program similar to that required under part 121. Aircraft that are type certificated for nine or less passenger seats will be maintained under a maintenance program upgraded from present standards.

The rule upgrades training, testing, and proficiency requirements to ensure that passengers on aircraft operated under part 135 are flown by well qualified crewmembers.

Under this rule, a ground proximity warning system (GPWS), or an approved alternate system, is required on turbojets capable of carrying 10 or

[2] It might be argued that some operators could remove one or two seats from aircraft that carry slightly more than the 10 passengers to avoid the otherwise applicable regulations. This is unlikely to present a problem for at least two reasons: (1) There are only 11 aircraft types that have 10 or 11 seats as a standard configuration, so seat removal is a relatively limited possibility; and (2) seat removal precludes the realization of aircraft's full productivity potential and results in a significant economic penalty to the operator.

more passengers. These airplanes descend rapidly if attitude control is inadvertently neglected. They do not recover as quickly as propeller-driven airplanes because of the relatively slow response of the jet engine to throttle settings for increased power. In this connection, the FAA is emphasizing installation of a visual approach slope indicator (VASI) system on all runways with a non-precision approach. This system should materially reduce the number of accidents occurring during landing approaches.

Revised part 135 requires a shoulder harness for each pilot crewmember on all turbojets and all aircraft capable of carrying 10 or more passengers. The FAA has found this to be an important safety feature. However, the rule makes allowance for the serious retrofit problems encountered on smaller aircraft. In addition, § 91.33(b)(13) requires a shoulder harness for each front seat of small civil airplanes manufactured after July 18, 1978. Thus, new airplanes capable of carrying less than 10 passengers coming into service under part 135 will be equipped with shoulder harnesses when delivered by the manufacturer.

A third attitude gyro is required on all turbojets because of the performance characteristics of those airplanes. Requiring this instrument on turbopropeller airplanes was considered, but that was found to be unnecessary because immediate information showing loss of attitude control is less important for turbopropeller airplanes.

Operational flexibility has been enhanced in the rule. One example is that ATCO certificate holders will be allowed to operate larger aircraft under the rules of part 135. Another example is the provision for a minimum equipment list for multiengine aircraft which will increase schedule reliability and decrease out of service time.

Finally, under the rules of the Federal Election Commission (FEC), a candidate in a Federal election must pay for carriage in an aircraft (11 CFR Chapter 1). Ordinarily, receipt of payment for carriage is an operation for compensation or hire and requires a part 135 certificate. However, carriage of candidates is infrequent and the operator does not intend to engage in the business of an air carrier or commercial operator. This carriage would not be subject to new part 135 if (1) the principal business of the operator is not as an air carrier or commercial operator, and (2) the payment for the carriage is required by the FEC rules.

Revised part 135 does not require a flight data recorder (FDR). Requirements for a cockpit voice recorder (CVR) and ground proximity warning system (GPWS) apply to turbojets capable of carrying 10 or more passengers. In its letter of April 13, 1978, to the Administrator, the National Transportation Safety Board recommended new standards be developed for the FDR and CVR. Two of the Board's three specific recommendations were as follows:

Develop, in cooperation with industy, flight recorder standards (FDR/CVR) for complex aircraft which are predicated upon intended aircraft usage.

Draft specifications and fund research and development for a low cost FDR, CVR, and composite recorder which can be used on complex general aviation aircraft. Establish guidelines for these recorders, such as maximum cost, compatible with the cost of the airplane on which they will be installed and with the use for which the airplane is intended.

The FAA is developing proposed rules to carry out the Board's recommendations. The Board also recommended that, until new standards are developed, turbine-powered aircraft capable of carrying six or more passengers which must have two pilots, be required to have a CVR. The current FAA study of revising the part 91 rules for general aviation operations will consider this recommendation. This is a more appropriate forum since it will have broader applicability and is more generally geared to the aircraft requirements. Because of this, the FAA concludes that the public interest is served best by not requiring an FDR under part 135 at this time and by requiring a CVR on turbojets capable of carrying 10 or more passengers.

Proposals Withdrawn or Deferred

In response to comments received on notice 77-17, three proposed sections to part 135 have been withdrawn completely. One proposal, flight and duty time regulations, is being deferred for reasons discussed below.

PERIODIC FINANCIAL STATUS REVIEW (PROPOSED § 135.37)

The more than 80 commenters on this proposed rule were almost unanimously opposed. They believe that FAA has neither the right nor the justification to periodically examine their books. They are concerned that the financial information acquired during this review would be released to the public under the Freedom of Information Act. Upon further consideration, the FAA has determined that a periodic review of an operator's financial records is not necessary. The FAA has general authority to conduct surveillance and investigations under the Federal Aviation Act, and may secure access to any records (including financial records) of an operator when necessary to carry out its safety responsibilities [§§ 313(a), 601(a)(6), and 604(a) of the Federal Aviation Act (49 U.S.C. 1354(a), 1421(a)(6), and 1424(a))]. This specific rule is not required and therfore it is withdrawn.

FLIGHT INFORMATION: FACILITIES AND SERVICES (PROPOSED § 135.51)

Nearly all commenters oppose this proposed rule. It was based on § 121.603 which is among the dispatch and flight release rules in subpart U of part 121. There are no dispatch or flight release requirements in revised part 135. Therefore, proposed § 135.51 is withdrawn.

HELICOPTER OPERATIONS: EMERGENCY LANDING AREAS (CURRENT § 135.89)

The Helicopter Association of America (HAA) petitioned the FAA to revoke this section. HAA argues that the rule discriminates against helicopters because the minimum safe altitude requirements in § 91.79 apply to all aircraft including helicopters. Notice 77-17 proposed to revoke current § 135.89 and no opposing comments were received. Current § 135.89 is no longer necessary and is revoked.

FLIGHT AND DUTY TIME REGULATIONS (PROPOSED SUBPART F)

An entire subpart dealing with flight crewmember flight and duty time limitations has been deferred for further consideration while the rulemaking proposed in notice 78-3 is completed. That notice proposed changes in flight and duty time limitations governing parts 121 and 123 operators. Since many of the concepts presented in notice 87-3 are similar to those proposed in notice 77-17, information received in response to notice 78-3 will be helpful to the FAA in completing the part 135 flight and duty time limitations rulemaking action. In view of the deferral, the present regulation is retained.

Regulatory Analysis

This revision imposes on all part 135 operators more stringent operating requirements. They are similar in certain respects to those being met by part 121 operators or by air taxi operators and commuter air carriers operating under § 135.2. The FAA has undertaken an extensive analysis to determine the monetary impact of the final rule. Careful attention was paid to determining alternative methods of achieving equivalent levels of safety with a view toward the cost impact of the alternatives. The analytical process is presented in appendix B and the full study is in docket 16097.

After factoring out the deferred flight time and duty regulations, the initial cost of equipment, manuals, programs, and other new require-

ments, plus annual recurring cost of the NPRM, less revenue offsets was $52,483,000. A comparable figure for the final rule is $33,398,000. Thus, the analysis performed after the receipt of public comment on the notice pared $19,085,000 from the impact of the rule. This is a 36-percent cost reduction. This cost will be spread over approximately 2,200 commuter/air taxi operators who operate 9,498 airplanes. It must be kept in mind that the various public steps which led up to the notice, and which were detailed above, had already helped focus the FAA on the most cost effective methods of achieving the needed safety levels.

The cost savings between the notice and the final rule are primarily from adjustments to the proposed requirements as to periodic financial reviews, management personnel, weather reports and forecasts and IFR requirements, and operations in icing conditions. These comparisions are shown in table I.

TABLE I

RESULTS OF COST IMPACT ASSESSMENT: FINAL RULE VERSUS NPRM 77-17 (MEAN VALUES)
($000)

Item No.	Rule Section No.	NPRM Section No.	Section Title	Total Cost Final Rule Basis	Total Cost NPRM Basis	Difference
1	135.2	(135.2)	Air Taxi Operations with Large Aircraft	-120	-120	0
2	135.21	(135.23)	Manual Requirements	1,819	1,819	0
3	Deleted	(135.37)	Periodic Financial Status Review	0	2,354	2,354
4	135.37, .39	(135.39, .41)	Management Personnel Required and Qualifications	9,581	15,690	6,109
5	135.63	(135.49)	Recordkeeping Requirements	3/	3/	
6	135.65	(135.53)	Reporting Mechanical Irregularities	526	526	0
7	135.69	(135.57)	Restriction or Suspension of Operations: Continuation of Flight in an Emergency	1,595	1,595	0
8	135.75	(135.63)	Inspection Credentials: Admission to Pilots Compartment: Forward Observers Seat	200	332	132
9	135.87,	(135.75)	Carriage of Cargo Including Carry on Baggage	697	697	0
10	135.89, .157	(135.77, .129)	Pilot Requirements: Use of Oxygen and Oxygen Equipment Requirements	0	385	385
11	135.97	(135.85)	Aircraft and Facilities for Recent Flight Experience	29	29	0
12	135.149, .151, .153	(135.125)	Equipment Requirements: General and Cockpit Voice Recorders and Ground Proximity Warning System	1,350	1,890 1/	540
13	135.155	(135.127)	Fire Extinguishers: Passenger-Carrying Aircraft	0	167	167
14	135.165	(135.137)	Radio and Navigation Equipment: Extended Overwater or IFR Operations	323	323	0
15	135.167	(135.139)	Emergency Equipment: Extended Overwater Operations	3	3	0
16	135.171	(135.143)	Shoulder Harness Installation at Flight Crewmember Stations	201	201	0

TABLE I

RESULTS OF COST IMPACT ASSESSMENT: FINAL RULE VERSUS NPRM 77-17 (MEAN VALUES)
($000)
(Continued)

Item No.	Rule Section No.	NPRM Section No.	Section Title	Total Cost Final Rule Basis	Total Cost NPRM Basis	Difference
17	135.173	(135.145)	Airborne Thunderstorm Detection Equipment Requirements	1,410	1,410	0
18	135.177	(135.147)	Emergency Equipment Requirements for Aircraft Having a Passenger Seating Configuration of More than 19 Passengers	0	0	0
19	135.179	(135.149)	Inoperable Instruments and Equipment for Multi-Engine Aircraft	16	16	0
20	135.213, .225	(135.171, .185)	Weather Reports and Forecasts and IFR: Takeoff, Approach and Landing Minimums	11,301	17,744	6,443
21	135.215	(135.175)	IFR: Operating Limitations	-2,133	-2,133	0
22	135.219	(135.179)	IFR: Destination Airport Weather Minimums	-2,140	-2,140	0
23	135.223	(135.183)	IFR: Alternate Airport Requirements	-544	-544	0
24	135.227	(135.187)	Icing Conditions: Operating Limitations	0	2,015	2,015
25	135.243	(135.193)	Pilot in Command Qualifications	485	485	0
26	135.245	(135.197)	Second in Command Qualifications	400	1,340	940
27	135.261	(135.200-.219)	Flight and Duty Time Limitations	2/	2/	
28	135.293	(135.225)	Initial and Recurrent Pilot Testing Requirements	-2,191	-2,191	0
29	135.297	(135.229)	Pilot in Command: Instrument Proficiency Check Requirements	-294	-294	0
30	135.299	(135.231)	Pilot in Command: Line Checks: Routes and Airports	586	586	0
31	135.321-.351	(135.237-.267)	Training	2,966	2,966	0
32	135.411-.443	(135.333-.365)	Maintenance, Preventive Maintenance, and Alterations	7,332	7,332	0
	TOTAL			33,398	52,483	19,085

1/ These costs are from a special "off-line" analysis because the sample of small air taxi operators did not include operators of affected turbojet aircraft.

2/ Flight and duty time limitation and associated recordkeeping deferred for further rulemaking action. See discussion in accompanying text.

3/ Major cost impacts in recordkeeping relate to flight and duty time and are, therefore, deferred. Other cost impacts are negligible.

NOTE: For a discussion of the derivation and additional analyses of these estimates, see the Regulatory Analysis appendix to this preamble.

Review of Revised Part 135

The FAA will announce an evaluation of revised part 135 early in 1980. By then, more than 1 year will have passed since these amendments take effect. The review will enable the public to discuss any problems relating to the implementation and application of the revised part. Ways to further improve the rules also will be discussed. In addition, comments submitted on notice 77-17 which could not be considered within the scope of that notice can be raised during this discussion. This action is in keeping with the spirit of Executive Order 12044, "Improving Government Regulations" (43 FR 12661; Mar. 24, 1978).

Form of Revised Part 135

SECTION NUMBERS

Revised part 135 sections are renumbered so this part is consistent with the form of other Federal Aviation Regulations. In the following discussion of comments, the section number assigned in this revision is the one used. The section numbers in this revision differ from the numbers proposed for those sections in notice 77-17 in almost every instance. So that readers may refer back to discussion in the preamble to notice 77-17, the obsolete proposed section numbers are cited parenthetically after the new section number and title in the discussion that follows. A reference table is published at the end of the part which shows each section in the revised part and the comparable section in the current part.

EDITORIAL CHANGES

In adopting this revision of part 135, the drafters carefully reviewed the rule for both clarity and internal consistency. The rule has been extensively edited to improve it without changing substance. Nonsubstantive editorial changes are not discussed in the preamble. Clarifying changes are indicated where that is appropriate. In addition, the rule was extensively revised to eliminate personal pronouns indicating gender.

OTHER CHANGES

In addition to these editorial changes, the rule contains some changes that were not discussed in notice 77-17. These changes were made in the spirit of Executive Order 12044, "Improving Government Regulations," and the Department of Transportation implementing policies and procedures (43 FR 9582; Mar. 8, 1978). The reasons for each change are detailed in the following discussion. Because these changes are necessary for safety, are in the public interest, clarify the rules proposed, or relax a burden, I find that notice and public procedure are not necessary and good cause exists for adopting them in this revision of part 135.

Discussion of Comments

Several sections are merely redesignated from current part 135. Comments were not requested on these redesignated sections. Other sections that notice 77-17 proposed to change drew only favorable comment or no comment at all. They are not mentioned in the discussion that follows. These sections are §§ 135.7, 135.15, 135.17, 135.27, 135.29, 135.31, 135.33, 135.35, 135.41, 135.61, 135.71, 135.73, 135.79, 135.83, 135.97, 135.99, 135.101, 135.107, 135.111, 135.113, 135.119, 135.141, 135.147, 135.183, 135.185, 135.201, 135.203, 135.205, 135.207, 135.209, 135,211, 135.217, 135,221, 135.241, 135.291, 135.303, 135.329, 135.365, 135.367, 135.369, 135.371, 135.373, 135.375, 135.377, 135.381, 135,383, 135.385, 135.387, 135.389, 135.391, 135.393, 135.395, 135.419, and 135.441.

Compliance Time

As discussed earlier in the preamble, this revision of part 135 is the largest, most complex safety rulemaking project that the FAA has undertaken. Revised part 135 takes effect on December 1, 1978. Because of the scope of this rulemaking, a flexible mechanism is essential to provide for an orderly transition from the current rules to the new rules. Several provisions are added to allow this. They are patterned on the procedures used when part 135 was upgraded in 1970.

In general, an operator who holds a part 135 operating certificate on December 1, 1978, has 60 days (until February 1, 1979) during which to apply for new operations specifications under new part 135. If an operator elects not to apply for new operations specifications, then the operating certificate held expires on February 1, 1979, and must be returned to the Administrator. If an operator applies for new operations specifications, the FAA will ask for a schedule that reflects the operator's plan for compliance with the new rules. The operator also will be asked to select a date on which it will meet new part 135 and will be ready for an FAA inspection to determine that it, in fact, does so. When the inspection is completed and the operator is in compliance, the FAA will issue new operations specifications. During this time, the existing operating certificate and operations specifications continue in effect.

However, the existing operations specifications expire in any case on: (1) the date the new operations specifications are issued; (2) the date the application is denied; or (3) August 1, 1979, whichever date is the earliest. Section 135.9(d) provides that, if the certificate holder cannot comply by the extension date due to circumstances beyond its control, that date in § 135.9(c) may be extended to December 1, 1979. The certificate holder must apply to the Director, Flight Standards Service, before July 1, 1979, and submit an acceptable schedule for compliance. Any expired operating certificate must be returned to the Administrator.

Certain part 135 certificate holders now operate large aircraft under operations specifications that require compliance with rules in part 121. Under § 135.2(d), they may continue these operations indefinitely if they wish. If they choose to apply for operations specifications under § 135.9(b), their authority to operate large aircraft continues until they are issued new operations specifications authorizing those operations.

Section 135.10 is added to establish separate compliance dates for certain rules which will require additional time to meet. Under § 135.10(a), certificate holders have until June 1, 1979, to comply with the requirements for a third attitude gyro (§ 135.149(c)), for shoulder harnesses (§ 135.171(a)), for airline transport pilot certificates (§ 135.243(a)) and for instrument ratings (§ 135.243(b)(iii)). Under § 135.10(b), certificate holders have until December 1, 1979, to comply with the requirements for CVR (§ 135.151), for GPWS (§ 135.153) and for airborne thunderstorm detection equipment (§ 135.173). These compliance dates are established to avoid placing an undue burden on certificate holders and pilots.

Section 135.10(c) provides that the Director, Flight Standards Service, may extend these specific compliance dates, but not beyond December 1, 1980. To get an extension, the certificate holder or pilot must: (1) Show it cannot comply due to circumstances beyond its control; and (2) submit before the original compliance date a schedule which indicates it will comply at the earliest practicable date.

FAA Flight Standards Inspectors are being given training in the differences between the current rules and revised part 135. Extensive guidance material has been prepared to assist them during the transition. Advisory material is also being prepared for operators and it will become available shortly. Several specific subjects of this material are discussed in detail under the rules involved. This training, written guidance, and advisory material and the changes made in §§ 135.2, 135.9, and 135.10 should ensure a smooth transition to the improved safety rules.

AIRCRAFT SIZE

Commenters generally state that the use of different terms in part 135 to describe passenger-carrying capacity is confusing. These comments have merit and the standard phase "maximum passenger seating configuration, excluding any pilot seat" is used throughout subparts A through I of revised part 135. Using the actual seating configuration of an airplane is the easiest way to determine the applicability of the operating rules because all the FAA or certificate holder need do is count the seats.

However, a different term is used to determine the applicability of the maintenance rules in subpart J (see the discussion of § 135.411). This is the number of seats which forms the type certification base of the aircraft. This is done because the certification basis of an aircraft is used to determine the maintenance requirements which will apply.

EXERCISE OF AUTHORITY

Under current §§ 135.15(d) and 135.17(d), a part 135 operator may petition the Administrator for reconsideration within 30 days after receiving a refusal to amend its certificate or operations specifications. Authority to consider these petitions for reconsideration is delegated to the Director, Flight Standards Service. This delegation is reflected in §§ 135.15(d) and 135.17(d) as adopted in this revision. Also, for uniformity in part 135, the term "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" is used to describe the responsible FAA office.

APPENDIX A

	THUNDERSTORM DETECTION/ WEATHER RADAR EQUIP	ATP CERTIFICATE FOR PILOT IN COMMAND	PART 121 TYPE MAINTENANCE PROGRAM	PILOT SHOULDER HARNESS
COMMUTER RPMs				
- Total - % covered	76	97	67	76
actual (millions)	515.4	659.6	457.0	515.5
- Multiengine - % covered	79	99	69	78
actual (millions)	515.4	659.6	457.0	515.5
- Turboprop - % covered	97	100	99	99
actual (millions)	347.1	356.2	354.8	354.8
ON-DEMAND RPMs				
- Total - % covered	20	23	11	24
actual (millions)	69.4	76.7	35.2	78.4
- Multiengine - % covered	37	42	18	42
actual (millions)	69.1	76.7	33.5	76.6
- Turboprop - % covered	69	71	71	71
actual (millions)	26.7	27.3	27.3	27.3

This table illustrates the substantial increase in the level of safety under new Part 135.

APPENDIX B—REGULATORY ANALYSIS

ECONOMIC CONSEQUENCES

In analyzing the economic consequences of this final rule and its major alternative, primary emphasis was placed on the burdens placed on the commuter and on-demand air taxi operators in the domestic fleet. This analysis was accomplished in several phases. First, preliminary data on the industry cost impact of the part 135 changes in notice 77-17 of August 29, 1977, as amended on October 27, 1977, were developed through a scientific sample of commuter and on-demand air taxi operators conducted under contract. These estimates by sampled operators were then subjected to a detailed statistical analysis to enhance the precision of industrywide cost impacts. The industry cost estimates were then adjusted for changes between the notice and the final rule. The reasonableness of the final rule estimates developed through this statistical sampling technique was then tested by comparison to an independently derived set of judgmental estimates based on FAA staff expertise in commuter and on-demand air taxi operations. Finally, the relationship of these industry cost estimates to other more general economic consequences was assessed.

INITIAL COST IMPACT ASSESSMENT

To obtain information on all factors relevant to a determination of which proposed part 135 changes were appropriate for final rulemaking, the FAA required more detailed and consistent data on industry cost impacts than it had previously developed or received through the notice and public comment process. The FAA, therefore, commissioned an independent and comprehensive assessment of the cost impacts likely to result from the proposed changes. This assessment, which examined the impact of individual proposed changes as well as of all changes taken together, was conducted between February 6, 1978, and April 20, 1978, by the Aerospace Corp. with support from Gellman Research Associates, Inc.

OUTLINE OF STUDY

The cost impact assessment was structured to include the following major elements:

- Identification, classification and characterization of potential cost impact areas, through a detailed analysis of the notice and by comparison with the existing part 135, in light of known industry practices and procedures.
- Analysis and test of a classification system for air commuter and air taxi operators designed to differentiate the varying cost impacts of the proposed changes across the diverse elements of the industry.
- Development and implementation of an optimal allocation method for choosing a scientific sample of operators with reasonable assurance of achieving high statistical significance of the results.
- Conduct of 64 air commuter and 20 on-demand air taxi operator interviews, utilizing an interview format designed to produce data on the specifically identified cost impacts.
- Processing of the collected data to produce preliminary assessments of cost impacts of the air commuter and on-demand air taxi industries for individual and aggregated proposed changes to part 135.

Information on the structure, conduct, and results of this cost impact study, along with discussions of limitations on the data developed, are provided in the sections that follow. Full documentation of the study and its associated data bases is provided in the three-volume report, "Cost Impacts of FAR Part 135 Changes on the Commuter and Air Taxi Industries," May 1978, the Aerospace Corp., which is in the docket.

IDENTIFICATION OF PART 135 CHANGES

To begin the cost impact assessment process, it was necessary to develop an indepth analysis of existing part 135 and the changes proposed in notice 77-17. For this purpose, a matrix was prepared to:

- Identify specific changes to part 135 proposed in the notice;
- Summarize the proposed changes to each affected subpart of part 135;
- Appraise the potential for cost impacts to air commuter and on-demand air taxi operators according to size of aircraft and fleet size; and
- Define the data required to assess and quantify the potential operator cost impacts.

Two additional steps were taken to assure that all proposed changes resulting in operator cost impacts were properly identified:

- First, comments received by the FAA under the notice and public comment process from industry members, trade associations, and others, were reviewed and incorporated into the cost impact matrix.
- Second, the draft cost impact classifications were reviewed by three major air commuters and two major on-demand air taxi operators with aircraft in the size ranges affected by the proposed changes.

As a result of the analysis and review process, 32 specific proposed part 135 changes were identified that were likely to impose operator cost impacts. These rules are listed in table 1 according to the four cost source categories: Equipment, Maintenance and Training, Revenue Loss (Gain), and Personnel Duty Time and Proficiency.

TABLE 1

NPRM 77-17 RULE CHANGES WITH COST IMPACTS

EQUIPMENT		MAINTENANCE/TRAINING		REVENUE LOSS (GAIN)		PERSONNEL DUTY TIME/PROFICIENCY	
NPRM NO.	DESCRIPTION	NPRM NO.	DESCRIPTION	NPRM NO.	DESCRIPTION	NPRM NO.	DESCRIPTION
135.63	FAA Inspector Seat	135.2	30-Passenger Size Allowance	135.57	Continuation of Flight Criteria	135.39,.41	Management Qualifications
						135.49	Flight and Duty Records
135.75	Baggage Restraints	135.23	Procedure Manual	135.149	Minimum Equipment List	135.85	Aircraft to Maintain Proficiency
						135.193	Pilot in Command ATP Requirements
135.77, .129	Oxygen Requirements	135.37	Financial Review	135.171, .185	Airport-Specific Weather Reports	135.197	Second in Command Ratings
135.125	Large Aircraft, Turbojet Equipment	135.53	Flight Irregularity Records	135.175	IFR Outside of Controlled Airspace	135.200-.219	Duty Time Limitations
135.127	Fire Extinguishers	135.237-.267	Training Program	135.179	Weather Reports and/or Forecasts	135.225	Competency Checks
135.137	IFR Equipment Requirements	135.333-.365	Maintenance Program	135.183	Alternate Airport Fuel	135.229	IFR Proficiency Checks
135.139	Life Preservers			135.187	Icing Condition Operations	135.231	VFR Line Checks
135.143	Shoulder Harnesses						
135.145	Thunderstorm Detection Equipment						
135.147	Crash Axe, etc.						

Preliminary analysis also indicated that industry cost impacts could be differentiated into the following categories according to the type of cost that would be incurred by the air commuter or on-demand air taxi operator:

- Initial cost (the one-time charge for purchase and installation of equipment, for launch of a new training program, for preparation of manuals, and so forth).
- Annual normal recurring cost (continuing costs to maintain additional equipment, for upkeep of new manuals, for continuing new proficiency checks, for salaries of added personnel, and so forth).
- Annual revenue loss (attributable to curtailed operations due to equipment downtime, reduced numbers of revenue passengers or amount of cargo, and so forth) or revenue gain (realized from improved operations resulting from added flights permissible with more flexible weather reporting, added revenue passengers or cargo because of lower fuel requirements, and so forth).

INDUSTRY CHARACTERIZATION

In parallel with the cost impact identification activity, a major effort was undertaken to acquire the data base needed to identify and characterize the air commuter and on-demand air taxi groups and then divide them into more definitive subcategories for analytical purposes. Data was gathered from various FAA, Civil Aeronautics Board (CAB), and other sources. For purposes of this cost impact assessment, the CAB form 298 series data proved to be the single most useful source, although data collected on several FAA forms relating to aircraft registration, certification, and airport development also provided needed supplementary information. Additional data from several industry associations provided further information on specific air commuter and on-demand air taxi characteristics.

The FAA report "Commuter Air Carrier Operators as of September 1976" was used as the basis for identifying the air commuter population. The report was compiled from CAB form 298-C data for the third quarter of 1976. Adjustments were made to the 181 operators listed to correct for three duplicate listings and for the inclusion of six operators utilizing large (over 30-passenger) aircraft not relevant for this analysis. Consequently, the net population of air commuter operators was set at 172. While this population was known to be incomplete to a small degree because of late filings of quarterly information, the selection population of 172 operators does comprise those air commuters accounting for over 95 percent of operations performed by the portion of the air commuter industry affected by part 135 changes.

Population data for on-demand air taxis were derived from CAB form 298-D filings for calendar year 1976. A computerized data base for this information was developed for the first time to conduct this cost impact assessment. The data base indicates that there is a total domestic on-demand air taxi population of 2,273 operators. Thus, on-demand industry is an order of magnitude larger than the air commuter industry in terms of numbers of operators.

Based on an analysis of these data bases, it was determined that the total commuter population could be categorized into three groups according to the size of the fleet operated in commuter service: 1-4 aircraft, 4-10 aircraft, and more than 10 aircraft. Similarly, size of aircraft operated by air commuters could be grouped into three convenient categories: 0-9 seats, 10-19 seats, and 20-30 seats. The break points in aircraft size groupings correspond to the differing regulatory requirements proposed for each of these categories under the part 135 notice. Finally, to assess whether geographic differences were important in the incidence of

United States was divided into five areas corresponding to the following aggregations of the 11 FAA regions:

Area 1: Alaska, Northwest, Rocky Mountain regions.

Area 2: Pacific, Southwest, Western regions.

Area 3: Southern region, including Caribbean.

Area 4: Great Lakes and New England regions.

Area 5: Central and Eastern regions.

These groupings were based on the likelihood of the geographic areas exhibiting similar weather and terrain characteristics.

A scientific sampling procedure was developed for selecting those air commuters and on-demand air taxis to be interviewed. Based on priorities established by the FAA, about 75 percent of study team resources during the cost impact data collection process were devoted to the air commuter industry; thus, the air commuter sampling procedure was defined to yield 64 carriers, representing more than one-third of the identified population. On the other hand, the on-demand air taxi sampling procedure was defined to yield only 20 carriers. While this sample size is less than 1 percent of the industry, an analysis of the industry and the likely cost impacts indicated that it would be sufficiently representative for purposes of this study, except for helicopter and turbine aircraft operators, who were analyzed by nonsample techniques.

The air commuter sample was optimally allocated across the total population by utilizing a 45-cell matrix (three fleet sizes, three aircraft sizes, and five geographical regions). The on-demand air taxi sample was optimally allocated utilizing a 15-cell matrix (three aircraft sizes and five geographical regions). In accomplishing the on-demand air taxi allocation, the available data base required the use of a surrogate measure for aircraft size. For this purpose, passengers per departure was selected.

CONDUCT OF INTERVIEWS

The interview process was structured by the development of a comprehensive interview guide designed to obtain from each sampled operator: (1) Confirming demographic information, (2) raw cost data concerning individual proposed changes to part 135, and (3) confirming information from operators for use in validating the consistency of raw cost impact estimates. Some operators contacted found it inconvenient to participate because of the limited time available. Several of the on-demand air taxi operators selected had gone out of business. More than a dozen substitutions were identified for these various reasons, using a replacement algorithm in the scientific selection process.

ANALYSIS OF DATA

The data obtained through the interview process consisted of operator cost impact estimates for each of the 32 proposed regulatory changes. For each change, cost data was elicited in three categories: Initial cost; normal recurring cost; and recurring revenue loss (gain). A data processing computer program was developed to permit the aggregation of cost impacts over any specified subset of the changes for any specified population subset. The computer program developed expected (mean) value estimates of cost impacts, the standard error of those estimates, and a 0.9 confidence interval of the cost impact.

A number of instances were found where air commuter and on-demand air taxi operators indicated that a cost impact would result but were unable to make a specific cost estimate. These instances occurred most frequently where equipment items, such as shoulder harnesses and thunderstorm detection devices, would be required under the proposed part 135 change. For those cases, independent cost estimates were developed utilizing data from manufacturers of this equipment. In some instances, it was also found that an occasional operator estimate would be extremely high. These observations were carried through the calculations and reflected as operator estimates. Each such case was, howev-

er, given special consideration, and when it was determined that there was no peculiar characteristic of the operator that would justify the higher cost, an independent cost estimate was made based on manufacturer or industry data and a second cost impact calculation performed. Several "off-line" analyses were also made to acquire information on operators of turbojet equipment, large aircraft, and helicopters, because most of the sampled operators did not operate such equipment.

STATISTICAL ANALYSIS

The preliminary industry cost impact estimates were then subjected to a comprehensive analysis that included the following steps: (1) Examination of the sampling and estimating methods used in the preliminary analysis; (2) analysis of the probability distribution of the data; (3) determination of the sensitivity of the preliminary estimates to analytical methods employed in sampling and impact; (4) enhancement of the data to satisfy the initial conditions necessary for the application of various statistical techniques; (5) estimation of costs and benefits for various combinations of subgroups within the sample of commuters and on-demand air taxi industries; and (6) tests of significance for various estimates of the cost of the proposed rule changes as a whole and of the costs due to individual rule changes. This analysis is documented in the report "Analysis of the Relationship of Costs and Benefits Estimated for proposed revision to FAR Part 135," Gellman Research Associates, Inc., June 1978, which is in the docket.

RESULTS OF INDUSTRY COST ASSESSMENT

The results of the above analysis are presented in table 2 for each rule change proposed in the notice with an industry cost impact. In addition to totals for each of the commuter and on-demand air taxi sectors, detailed breakouts are provided according to the cost categories of initial, normal recurring and revenue loss (gain), as defined above. The major results are summarized below.

TABLE 2

RESULTS OF INDUSTRY COST IMPACT ASSESSMENT OF NPRM 77-17
(MEAN VALUES)

Item No.	NPRM Change No.	Description	Cost Element ($000)											
			Initial			Normal Recurring			Revenue Loss			Total		
			Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total
1	135.2	30-Passenger Size Allowance	0	0	0	-120	0	-120	0	0	0	-120	0	-120
2	135.23	Procedure Manual	110	1,463	1,573	108	138	246	0	0	0	218	1601	1,819
3	135.37	Financial Review	9	690	699	53	1,602	1,655	0	0	0	62	2292	2,354
4	135.39, .41	Management Qualifications	10	1,187	1,197	829	13,664	14,493	0	0	0	840	14851	15,690
5	135.49	Flight and Duty Time Records	0	0	0	298	3,464	3,762	0	0	0	298	3464	3,762
6	135.53	Flight Irregularity Records	4	0	4	94	428	522	0	0	0	98	428	526
7	135.57	Continuation of Flight Criteria	0	0	0	69	1,327	1,396	187	12	199	256	1339	1,595
8	135.63	FAA Inspector Seat	46	2	48	0	0	0	284	0	284	330	2	332
9	135.75	Baggage Restraints	224	473	697	0	0	0	0	0	0	224	473	697
10	135.77, .129	Oxygen Requirements	0	369	369	0	16	16	0	0	0	0	385	385
11	135.85	Aircraft to Maintain Proficiency	0	0	0	29	0	29	0	0	0	29	0	29
12	135.125	Large Aircraft & Turbojet Equipment	0	0	0	0	0	0	0	0	0	0	0	0
13	135.127	Fire Extinguishers	22	142	164	1	2	3	0	0	0	23	144	167
14	135.137	IFR Equipment Requirements	311	0	311	12	0	12	0	0	0	323	0	323
15	135.139	Life Preservers	3	0	3	0	0	0	0	0	0	3	0	3
16	135.143	Shoulder Harnesses	148	14	162	39	0	39	0	0	0	187	14	201

TABLE 2 (cont'd.)

Item No.	NPRM Change No.	Description	Cost Element ($000)											
			Initial			Normal Recurring			Revenue Loss			Total		
			Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total
17	135.145	Thunderstorm Detection Equipment	1,136	0	1,136	90	0	90	184	0	184	1,409	0	1,409
18	135.147	Crash Axe, etc.	0	0	0	0	0	0	0	0	0	0	0	0
19	135.149	Minimum Equipment List	0	16	16	0	0	0	0	0	0	0	16	16
20	135.171, .185	Airport Specific Weather Reports	18	473	491	22	81	103	1,043	16107	17,150	1,083	16661	17,744
21	135.175	IFR Outside of Controlled Airspace	0	0	0	-153	-1,890	-2,043	-90	0	-90	-243	-1890	-2,133
22	135.179	Weather Reports and/or Forecasts	0	0	0	69	-158	-89	-161	-1890	-2051	-92	-2048	-2,140
23	135.183	Alternate Airport Fuel	0	0	0	-218	0	-218	-11	-315	-326	-229	-315	-544
24	135.187	Icing Condition Operations	59	0	59	81	0	81	299	1576	1,875	439	1576	2,015
25	135.193	Pilot in Command ATP Requirements	143	0	143	342	0	342	0	0	0	485	0	485
26	135.197	Second in Command Rating	0	0	0	484	856	1,340	0	0	0	484	856	1,340
27	135.200-.219	Duty Time Limitations	0	0	0	5,648	19,287	24,935	165	7951	8,116	5,813	27238	33,051
28	135.225	Competency Checks	0	0	0	-176	-2,015	-2,191	0	0	0	-176	-2015	-2,191
29	135.229	IFR Proficiency Checks	0	0	0	-73	-221	-294	0	0	0	-73	-221	-294
30	135.231	VFR Line Checks	22	0	22	244	320	564	0	0	0	266	320	586
31	125.237-.267	Training Program	269	1,077	1,346	894	726	1,620	0	0	0	1,163	1803	2,966
32	135.333-.365	Maintenance Program	302	12	314	1,349	5,669	7,018	0	0	0	1,650	5681	7,331
		TOTAL	2,835	5,918	8,753	10,014	43,296	53,310	1,901	23441	25,342	14,750	72655	87,405

Total first year cost impact on the air commuter industry for the proposals in the notice would be approximately $14.7 million, 81 percent of which would be expected to recur each year thereafter. The corresponding on-demand air taxi industry total first year costs would be approximately $72.7 million, 92 percent of which would be expected to recur annually.

For air commuters, the individual changes proposed to part 135 with the greatest first year cost impacts would be those related to duty time limitations, upgraded maintenance programs, thunderstorm detection equipment, training programs, and airports specific weather reports. For air taxis, the greatest first year cost impacts would be those related to duty time limitations, airport specific weather reports, revised management qualifications, the upgraded maintenance program, and flight and duty time records.

Individual rule changes affect different portions of the commuter air carrier and on-demand air taxi industries differently. For example, 34 percent of the proposed changes would affect less than 10 percent of commuter operators, while 25 percent of the proposed changes would have no effect on on-demand air taxis. Furthermore, the duty time limitation would affect three-quarters of both commuter and on-demand air taxi operators and account for approximately 47 percent of total estimated normal recurring net costs and 38 percent of total costs.

Some of the changes proposed to part 135 in the notice produce important operator cost savings, including, for example, the effects of greater flexibility in uncontrolled airspace IFR operations, new alternate airport fuel requirements, greater flexibility in interpreting weather reports, and greater proficiency-check flexibility. The total of cost savings identified by the operators would be $7.4 million, of which 87 percent would accrue to on-demand air taxi operators.

The estimates of initial and recurring costs developed in this study are aggregate, making it difficult to judge the intensity of the impact on the operators, either as a group or subdivided into specific subgroups. To facilitate interpretation of the cost impact data, a comparison of costs and revenues was developed for the air commuters. From this analysis, it was determined that the greatest potential cost impacts in relation to revenues would be on those operators using the smallest aircraft (0–9 passengers) and having the smallest fleet size (1–4 aircraft). Air commuter operators of small fleets of large aircraft (20–30 passengers) would also experience relatively large cost impacts. Taken as a whole, air commuter industry cost impacts would represent about 4½-percent of revenues.

ADJUSTMENTS FOR CHANGES TO NOTICE PROPOSALS

Of the 32 proposed rule changes in the notice with a total cost impact of $52,483,000, nine items had changes that produced lower estimates of industry impact in the development of the final rule by $19,085,000. Two of these changes resulted from the deletion of the proposed requirement and seven changes resulted from a modification of the proposed rule that lessened its economic impact. Only two changes involved clarification of assumptions regarding availability of alternative means to meeting the proposed rule. Two other items were deferred for further rulemaking action. The comparison of industry costs impacts for the final rule and its major alternative (notice 77-17), detailing these adjustments in cost impacts, is discussed below and summarized in table 3 by cost item.

TABLE 3

RESULTS OF COST IMPACT ASSESSMENT: FINAL RULE VERSUS NPRM 77-17 (MEAN VALUES)

Item No.	Rule Section No.	NPRM Section No.	Section Title	Final Rule Cost Impact ($000)												Total Cost NPRM Basis
				Initial			Normal Recurring			Revenue Loss			Total			
				Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	
1	135.2	(135.2)	Air Taxi Operations with Large Aircraft	0	0	0	-120	0	-120	0	0	0	-120	0	-120	-120
2	135.21	(135.23)	Manual Requirements	110	1,463	1,573	108	138	246	0	0	0	218	1,601	1,819	1,819
3	Deleted	(135.37)	Periodic Financial Status Review	0	0	0	0	0	0	0	0	0	0	0	0	2,354
4	135.37, .39	(135.39, .41)	Management Personnel Required and Qualifications	8	712	720	663	8,198	8,861	0	0	0	671	8,910	9,581	15,690
5	135.63	(135.49)	Recordkeeping Requirements													3/
6	135.65	(135.53)	Reporting Mechanical Irregularities	4	0	4	94	428	522	0	0	0	98	428	526	526
7	135.69	(135.57)	Restriction or Suspension of Operations: Continuation of Flight in an Emergency	0	0	0	69	1,327	1,396	187	12	199	256	1,339	1,595	1,595
8	135.75	(135.63)	Inspection Credentials: Admission to Pilots Compartment: Forward Observers Seat	28	2	30	0	0	0	170	0	170	198	2	200	332
9	135.87,	(135.75)	Carriage of Cargo Including Carry on Baggage	224	473	697	0	0	0	0	0	0	224	473	697	697
10	135.89, .157	(135.77, .129)	Pilot Requirements: Use of Oxygen and Oxygen Equipment Requirements	0	0	0	0	0	0	0	0	0	0	0	0	385
11	135.97	(135.85)	Aircraft and Facilities for Recent Flight Experience	0	0	0	29	0	29	0	0	0	29	0	29	29
12	135.149, .151, .153	(135.125)	Equipment Requirements: General and Cockpit Voice Recorders and Ground Proximity Warning System	0	1,200	1,200	0	150	150	0	0	0	0	1,350	1,350	1,890 1/
13	135.155	(135.127)	Fire Extinguishers: Passenger-Carrying Aircraft	0	0	0	0	0	0	0	0	0	0	0	0	167
14	135.165	(135.137)	Radio and Navigation Equipment: Extended Overwater or IFR Operations	311	0	311	12	0	12	0	0	0	323	0	323	323
15	135.167	(135.139)	Emergency Equipment: Extended Overwater Operations	3	0	3	0	0	0	0	0	0	3	0	3	3
16	135.171	(135.143)	Shoulder Harness Installation at Flight Crewmember Stations	148	14	162	39	0	39	0	0	0	187	14	201	201

TABLE 3 (Continued)

RESULTS OF COST IMPACT ASSESSMENT: FINAL RULE VERSUS NPRM 77-17 (MEAN VALUES)

Item No.	Rule Section No.	NPRM Section No.	Section Title	Final Rule Cost Impact ($000)												Total Cost NPRM Basis
				Initial			Normal Recurring			Revenue Loss			Total			
				Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	Commuters	Air Taxi	Total	
17	135.173	(135.145)	Airborne Thunderstorm Detection Equipment Requirements	1,136	0	1,136	90	0	90	184	0	184	1,410	0	1,410	1,410
18	135.177	(135.147)	Emergency Equipment Requirements for Aircraft Having a Passenger Seating Configuration of More than 19 Passengers	0	0	0	0	0	0	0	0	0	0	0	0	0
19	135.179	(135.149)	Inoperable Instruments and Equipment for Multi-Engine Aircraft	0	16	16	0	0	0	0	0	0	0	16	16	16
20	135.213, .225	(135.171, .185)	Weather Reports and Forecasts and IFR: Takeoff, Approach and Landing Minimums	18	473	491	22	81	103	1,043	9,664	10,707	1,083	10,218	11,301	17,744
21	135.215	(135.175)	IFR Operating Limitations	0	0	0	-153	-1,890	-2,043	-90	0	-90	-243	-1,890	-2,133	-2,133
22	135.219	(135.179)	IFR: Destination Airport Weather Minimums	0	0	0	69	-158	-89	-161	-1,890	-2,051	-92	-2,048	-2,140	-2,140
23	135.223	(135.183)	IFR: Alternate Airport Requirements	0	0	0	-218	0	-218	-11	-315	-326	-229	-315	-544	-544
24	135.227	(135.187)	Icing Conditions Operating Limitations	0	0	0	0	0	0	0	0	0	0	0	0	2,015
25	135.243	(135.193)	Pilot in Command Qualifications	143	0	143	342	0	342	0	0	0	485	0	485	485
26	135.245	(135.197)	Second in Command Qualifications	0	0	0	200	200	400	0	0	0	200	200	400	1,340
27	135.261	(135.200-.219)	Flight and Duty Time Limitations													2/
28	135.293	(135.225)	Initial and Recurrent Pilot Testing Requirements	0	0	0	-176	-2,015	-2,191	0	0	0	-176	-2,015	-2,191	-2,191
29	135.297	(135.229)	Pilot in Command: Instrument Proficiency Check Requirements	0	0	0	-73	-221	-294	0	0	0	-73	-221	-294	-294
30	135.299	(135.231)	Pilot in Command: Line Checks: Routes and Airports	22	0	22	244	320	564	0	0	0	266	320	586	586
31	135.321-.351	(135.237-.267)	Training	269	1,077	1,346	894	726	1,620	0	0	0	1,163	1,803	2,966	2,966
32	135.411-.443	(135.333-.365)	Maintenance, Preventive Maintenance, and Alterations	302	12	314	1,349	5,669	7,018	0	0	0	1,651	5,681	7,332	7,332
	TOTAL			2,726	5,442	8,168	3,484	12,953	16,437	1,322	7,471	8,793	7,532	25,866	33,398	52,483

1/ These costs are from a special "off-line" analysis because the sample of small air taxi operators did not include operators of affected turbojet aircraft.

2/ Flight and duty time limitation and associated recordkeeping deferred for further rulemaking action. See discussion in accompanying text.

3/ Major cost impacts in recordkeeping relate to flight and duty time and are, therefore, deferred. Other cost impacts are negligible.

NOTE: The estimates provided in this table are refined from the preliminary figures provided in the study "Cost Impact of FAR Part 135 Changes on the Commuter and Air Taxi Industries, May 1978." The revised estimates for cost impacts of the proposed rule can be found in the study "Analysis of the Relationships of Costs and Benefits Estimated for Proposed Revisions to FAR Part 135, June 1978." Comparison of the preliminary and revised estimates are shown in Figure 4-23, pages 83 to 85 of the latter report. A discussion of the methods of estimation and data base enhancement are included in Sections III and IV of that report. These reference reports are available for review in docket number 16097.

Cost reductions resulting from the deletion of requirements between the notice and the final rule total $4,369,000 and involves financial reviews and icing conditions operations (items 3, 24).

The proposed rule on management requirements (item 4) was modified to be more flexible. In addition, FAA believes that operator estimates took inadequate consideration of the cost reducing option for deviations that would be authorized for equivalent experience. Since on-demand air taxis would normally have less equipment and personnel and would benefit more by combining management positions, their cost impact was reduced more than that for the commuters. Similarly, the cost impact of the proposed rule on airport weather reports (item 20) was reduced for the on-demand air taxi estimate of revenue loss because of inadequate consideration by the operators of alternative means available including amendment of operating specifications for alternative sources of weather reports. These two adjustments resulted in cost impact reductions of $6,109,000 and $6,443,000, respectively.

Item 8, § 135.75, providing a forward observer seat for FAA inspectors, drew negative comment. The final rule was written to state what type of communication equipment was required to be furnished to the FAA inspector. In addition, the preamble clarified that it would not be FAA policy to "bump" revenue passengers unnecessarily. This resulted in a reduction of the estimated cost impact from $332,000 to $200,000.

Item 10, §§ 135.89 and 135.157, pilot requirements for use of oxygen and oxygen equipment requirements, was modified from the notice to the final rule in light of the comments received. This resulted in a reduction of the estimated cost impact from $385,000 to zero.

Item 13, § 135.155, fire extinguishers, was changed from requiring a fire extinguisher in the passenger compartment of each aircraft seating at least six passengers to an aircraft seating at least 10 passengers. This resulted in a reduction of the cost impact from $167,000 to zero.

Item 12, §§ 135.149, 135.151, and 135.153, equipment requirements, was reduced from the original notice by $540,000 by eliminating the flight data recorder requirement. Safety of flight will not be compromised by such a withdrawal.

It was estimated that § 135.245, second in command qualifications, would have an estimated cost of $1,340,000. The FAA believes that this figure is too high since only a few operators out of a very small sample reported an impact. When extrapolated to the total population, the estimated cost has been reduced to $400,000 (item 26). Also, many pilots currently serving in part 135 operations already possess the necessary rating since the ratings are required under the present rule for certain type operations.

FINAL RULE COST IMPACT ANALYSIS

When all adjustments to the notice are considered, the estimated first year costs to the industry will be $33,398,000. Of this total, $8,168,000, or 25 percent, will be initial costs; $16,437,000, or 49 percent, will be normal recurring costs; and $8,793,000, or 26 percent, will be from estimated revenue loss. The estimated cost of the significant changes to commuter air carriers is $2,726,000 in initial costs and $5,808,000 in annual recurring costs. The annual recurring costs are partially offset by estimated annual recurring savings of $1,002,000. The estimated initial cost to the air taxi segment is $5,442,000 with an annual recurring cost of $26,913,000. The annual recurring costs are partially offset by estimated annual recurring savings to the air taxi industry of $6,489,000.

In addition to the cost estimates derived from the scientific sampling of air commuter and on-demand air taxi operator estimates, the FAA conducted its own independent analysis of these proposed rules and their likely industry cost impacts. These estimates closely approximate the operator estimates taken as a whole across all rule changes. Estimates for individual cost items vary to some extent, reflecting differences primarily in assumptions as to current industry equipage and practice and the availability of alternative means for meeting proposed requirements.

In notice 77-17, four major proposals were highlighted as having major additional costs. Following a review of the response to notice 77-17 and the study of other pertinent data, the cost estimates of the economic impact of revised part 135 rules were reevaluated. These proposals are discussed below.

The first proposed to require airborne thunderstorm detection equipment for all equipment for all multiengine aircraft conducting passenger-carrying operations and having a passenger seating configuration of 10 seats or more, excluding any pilot seat. The FAA estimates that the airborne thunderstorm detection equipment requirement would result in an initial cost of $1,136,000 and an annual recurring cost including the loss of revenue of $274,000 (item 17).

The second proposed to require the use of a continuous maintenance program for all aircraft certificated to carry 10 passengers or more, exclusive of flight crew. The FAA estimates the initial cost to comply with this program will be $314,000 and the annual recurring cost will be $7,018,000 (item 32).

The third proposed to require all aircraft carrying 10 or more passengers to be type certificated in the transport category by 1984. This proposal was withdrawn by notice 77-17A.

The fourth proposed to require all turbojet aircraft, with a passenger seating configuration, excluding any pilot seat, of 10 passengers or more, to have a CVR, FDR, and GPWS installed. The requirement for an FDR is deleted in the final rule. Section 135.153 provides for approval of an alternate GPWS to that required. The initial cost is estimated to be $1,200,000 and the annual recurring cost to be $150,000 (item 12).

There were other sections of the proposed rules which, on further evaluation, do have a cost impact which should be discussed. These cost estimates are based on an analysis of imput received from part 135 operators and FAA evaluation. The following rules are expected to have an impact.

Section 135.21 (item 2) requires a manual setting forth the certificate holder's procedures and policies. Since a manual is already required by current part 135, there is only an incremental cost required to include additional information in the manual regarding the crew training program, the maintenance personnel data, and other company policy. In addition, some costs will be incurred for printing and distributing the revised manual. The FAA estimates this requirement will initially cost $1,573,000 and annual recurring costs will be $246,000.

Item 4, §§ 135.37 and 135.39 regarding management personnel requirements and qualifications will also increase costs to the operators. The rule has been revised from the notice to allow the director of operations and chief pilot to have a commercial pilot certificate instead of an ATP certificate. An ATP certificate would only be required if the certificate holder is conducting operators which would require the pilot in command to hold an ATP certificate. This would involve only a small portion of the certificate holders. The management personnel of many of these operators already meet this requirement. It should be noted that the rule provides for deviation authority from the FAA in combining positions or authorizing different positions when the size of the organization cannot support the type and number of positions in the rule. The FAA can also grant deviations from the experience requirements. Many operators were concerned that

deviations would not be granted except in very unusual cases. Consequently, it appears they overestimated the cost impact.

A majority of the operators now have a management organization to some extent, thus, only minor changes would be required to meet the new rules regarding the number of persons and additional qualifications. The estimated additional cost to initially meet this requirement is $720,000 and annual recurring costs are estimated to be $8,861,000.

The recordkeeping changes as required by § 135.63 (item 5) also involve quantifiable cost increases. The primary additional cost factor in this area is in maintaining records for flight and duty time limitations. The proposals in subpart F dealing with flight and duty time limitations are deferred; consequently, the additional recordkeeping provision is also deferred and cost impacts, being minimal, are deleted.

A new requirement in § 135.69 to restrict or suspend operations, if conditions hazardous to safe operations are known to exist, is estimated to result in annual recurring costs of $1,595,000 (item 7).

New subpart H sets forth requirements for training and for the development of a training program. The estimated cost to initially meet these requirements is $1,346,000, with estimated annual recurring costs of $1,620,000 (item 31).

Section 135.87 (item 9), regarding the stowage of cargo and carry-on baggage, will require some modifications to be made to certain aircraft, especially in the stowage of under seat baggage. The estimated initial cost to industry is $697,000 with little annual recurring costs.

The proposals in subpart F (item 27), dealing with flight and duty time limitations, are deferred. Consequently, all potential cost impacts have been deleted.

Under the provisions of § 135.213, weather reports and forecasts and § 135.225, IFR: takeoff, approach and landing minimums (item 20), no pilot may begin an instrument approach to an airport unless the airport has designated weather reporting facilities. The weather reporting facility must be operated by the U.S. National Weather Service, a source approved by it, or a source approved by the Administrator. However, an operator's operations specifications may be amended, under certain circumstances, to allow weather observations to be taken at a location other than on that airport, thus allowing an operation to be conducted into that airport. The FAA estimates this rule change will result in an initial cost of $491,000 and an annual recurring cost including revenue loss of $10,810,000.

There are other rule changes, such as reporting mechanical irregularities (§ 135.65), aircraft and facilities for recent flight experience (§ 135.97), radio and navigation equipment requirements (§ 135.165), emergency equipment: extended overwater operations (§ 135.167), shoulder harness installation (§ 135.171), minimum equipment list (§ 135.179), pilot in command qualifications (§ 135.243), second in command qualifications (§ 135.245), and line checks (§ 135.299), which will have a total initial estimated cost of $661,000 and a total annual recurring cost of $1,908,000 (items 6, 11, 14, 15, 16, 19, 25, 26, 30).

Various changes were proposed to the current part 135 rules which will result in a cost savings to the part 135 operators. The implementation of §§ 135.1 and 135.2 will result in a savings because of the authorization to use larger aircraft under part 135 rules with the advantage of carrying more passengers or heavier payloads.

Section 135.177 (item 18), regarding the use of a minimum equipment list for multiengine aircraft, will result in an overall cost savings to the operators, especially commuter air carriers, who elect to take advantage of its provisions. However, if an ATCO certificate holder elects not to apply for such approval, no costs savings would be realized.

Another section where savings will be realized is that regarding IFR operating limitations, § 135.215 (item 21). This rule contains provisions relaxing IFR operations outside of controlled airspace and at airports that do not have approved procedures. The majority of the savings will accrue to on-demand air taxi operators.

The relief granted operators regarding destination airport requirements for IFR operations in § 135.219 will also result in cost savings to both commuter air carriers and air taxi operators. The rule allows over-the-top operations and the use of weather reports or forecasts or any combination of them for landing minimums at the destination airport (item 22).

In § 135.223 (item 23), the alternate airport weather minimum requirements for IFR operations have been amended to allow operators more flexibility in determining when an alternate airport would be necessary in flight planning. Reduction in fuel weight will reduce operating costs.

Section 135.293 (item 28) pertains to initial and recurrent pilot flight testing requirements. The use of simulators and relaxation of the requirements pertaining to each type of aircraft to be flown by the pilot for the check and the extent of maneuvers to be given, should result in a cost savings.

The last item deals with pilot in command, instrument proficiency checks, § 135.297 (item 29). Savings would result because a simulator could be used for a portion of the check. Additionally, only three typical instrument approach procedures need to be demonstrated in order for the pilot to be issued a letter of competency for all types of instrument approach procedures.

It is estimated that these changes (items 1, 18, 21, 22, 23, 28, and 29) will save commuter air carriers and on-demand air taxi operators $7,442,000 annually.

PART 121

§ 121.9 *Operations of airplanes having a maximum passenger seating configuration of 30 seats and a maximum payload capacity of 7,500 pounds or less.*

One commenter suggests that § 121.9 should except part 121 certificated air carriers from compliance with §§ 135.37 and 135.39 on management personnel requirements and qualifications. The commenter claims these requirements now are in part 121, those certificate holders already meet them and the part 121 rules meet or exceed those in part 135. The commenter submits safety would not be enhanced by requiring compliance with §§ 135.37 and 135.39 and compliance would be burdensome. These comments have merit, although the parallel part 121 rules apply only to supplemental air carriers and commercial operators. However, the corporate structure and management personnel qualifications of the domestic and flag air carriers are sufficient and the rule excepts those sections.

One commenter states that scheduled air carriers operating airplanes qualifying under part 135 should have an option to conduct their scheduled operations with those aircraft under either part 135 or part 121. Section 135.2(d) allows an operator who is now conducting operations in aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less, to continue operating under part 121 rules for supplemental air carriers, if the operator elects to do that.

Two commenters suggest that part 121 and part 135 operators should have the option to selectively apply appropriate provisions of part 121 with the approval of the Administrator. They state that this provides a higher level of safety. The revision of part 135 achieves an appropriate level of safety and the suggestion would create administrative difficulties in

the uniform application of the rules to part 135 operators.

One commenter recommends that the maximum number of passengers and the maximum payload of each aircraft should be limited by Aircraft Flight Manual data, instead of specifying a passenger seating configuration or payload capacity in the rule. This comment is discussed at length under § 135.1.

One commenter suggests changing the title of part 135 to "Air Charter Operators and Commercial Operators" because the term "Air Taxi" is demeaning. The Civil Aeronautics Board established this classification of exempt air carriers and designated them as "Air Taxi Operators" in 14 CFR Part 298. The term now is widely used by the aviation industry and the traveling public. This segment of aviation offers both on-demand and scheduled service. The term "Air Taxi" is not generally described or known as demeaning in aviation circles or by users.

Current § 121.9(b) is no longer needed since the dates have passed and it is deleted.

§ 121.13 *Rules applicable to helicopter operations: Deviation authority.*

Revised part 135 applies to aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less. Current part 135 applies to "small aircraft," as defined in § 1.1. The reference in § 121.13 to the operation of a "small helicopter" is changed to be consistent with revised part 135.

PART 127

§ 127.5 *Operation of airplanes having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.*

Section 127.5 is amended to be consistent with §§ 121.9, 121.11 and revised part 135 for the reasons just discussed. Current § 127.5(b) is no longer needed since the dates have passed and it is deleted.

SPECIAL FEDERAL AVIATION REGULATIONS (SFAR)

SFAR 23, "Airworthiness Standards; Small Airplanes Capable of Carrying More Than 10 Occupants," was issued on December 27, 1968 (34 FR 189; January 7, 1969). SFAR 23 is deleted from Title 14 CFR because it no longer is of current effect. Appendix A of part 135 supersedes SFAR 23 for airplanes type certificated after July 19, 1970 (see § 135.169(b)). This deletion does not affect the type certification basis of airplanes which demonstrated compliance with SFAR 23 before July 19, 1970. Appendix A is republished without substantive change in revised part 135.

Sections 135.151 and 135.153 supersede two other SFAR and they are revoked: SFAR 30, "Ground Proximity Warning Systems" and SFAR 33, "Flight Recorders and Cockpit Voice Recorders." Compliance with §§ 135.151 and 135.153 is discussed in detail above.

PART 135

SUBPART A—GENERAL

§ 135.1 *Applicability.* (*Proposed § 135.1.*)

One commenter on § 135.1(a)(3) recommends that the words "other than air carrier" and "commercial operations" be deleted. Part 135 applies both to commercial operator operations for compensation and hire and to air taxi operators who are exempt air carriers under 14 CFR Part 298. They are not the same and § 135.1(a)(3) is necessary.

One commenter on § 135.1(a)(3) states the limitations on the size of aircraft operated under part 135 should be determined under the Aircraft Flight Manual instead of specifying a passenger seating configuration or payload in the rule. An Aircraft Flight Manual contains technical data on operating limitations and flight parameters. The manual applies to a particular aircraft and not to all aircraft of the same make and model. Many manuals may not contain information on maximum passenger seating or payload capacities. A clear standard is necessary so there is no question about the applicability of revised part 135.

One commenter recommends that "on-demand" air taxi certificate holders be designated as category I, that they be considered "single entity charter" flights and that a category II apply to commuter air carriers and large airplane operators. Separating "on-demand" and commuter air taxi operators was considered in developing revised part 135. This concept was included in proposals considered during the part 135 Review Conference held at Denver in 1976. The concept was discussed at length during the conference. As discussed in the preamble of notice 77-17, rules based upon aircraft size (9 passengers or less excluding pilot seats and 10 passengers or more excluding pilot seats) are adopted to insure equal application of revised part 135.

One commenter states that part 135 should apply to sightseeing flights. Current § 135.1(b)(2) excepts sightseeing flights from part 135 and no facts have come to light that justify a change. The part 91 rules on flight operations and maintenance provide adequately for these operations.

Several commenters state that § 135.1(b)(7) is too restrictive. This exception to part 135 allows a limited kind of operation (for example, Santa Claus flights from an airport to a shopping center and back). The restrictions are necessary in the interest of safety. Of course, these operations are subject to part 91.

Another commenter objects to § 135.1(b)(7) because it prohibits sightseeing flights in helicopters. Section 135.1(b)(2) excepts from part 135 "nonstop sightseeing flights that begin and end at the same airport, and are conducted within a 25-statute-mile radius of that airport." This exception applies to sightseeing flights in any aircraft. Section 135.1(b)(7) applies to a more limited operation (for example, Santa Claus flights) that involves one or more stops. Section 135.1(b)(7)(iv) is changed to have the operator notify the "FAA Flight Standards District Office responsbile for the geographic area concerned."

One commenter recommends retaining current § 135.1(b)(7) that excepts from part 135 "any other operation approved by the Administrator." The commenter states this rule provides operational flexibility. The commenter does not explain what operational flexibility is needed or cite examples of using that section in its operations. There is no provision like current § 135.1(b)(7) in any other Federal aviation regulation. There is no record of any recent use of that section. Part 11 provides procedures for obtaining exemptions and for petitioning for rulemaking. Several sections in the revised part 135 also contain deviation authority. In this light and in the absence of any persuasive justification from the commenter, current § 135.1(b)(7) is not included in the rule.

Several instances have occurred in which a person desires to carry without charge a candidate in a Federal election. The candidate must pay for the carriage under the rules of the Federal Election Commission (11 CFR Chapter I). Ordinarily, receipt of payment for carriage is an operation for compensation or hire and requires a part 135 certificate. Carriage of candidates is infrequent and the operator does not intend to engage in the business of an air carrier or commercial operator. A new § 135.1(b)(10) is added to except this carriage in an aircraft to which part 135 would otherwise apply. There are two conditions: (1) The principal business of the aircraft operator must not be that of an air carrier or commercial operator; and (2) the payment must be required and may not exceed the amount required by the Federal Election Commission rules. The FAA contemplates issuance of a special Federal aviation regula-

tion which will relax the requirements of part 121 and present part 135 in time for the November 1978 Federal elections.

§ 135.2 *Air taxi operations with large aircraft. (Proposed § 135.2.)*

One commenter on § 135.2 recommends that the maximum passenger seating capacity of the aircraft operated under part 135 should be governed by the economic regulations of the Civil Aeronautics Board (14 CFR Part 298). Changes to the Board's rules then would automatically change the applicability of part 135. This would constitute a derogation of the FAA's responsibility for safety. Each change in the Board's definition of aircraft size could have significant safety implications. To properly discharge its responsibility for aviation safety, the FAA must conduct a thorough evaluation. If a change is appropriate, rulemaking is initiated to amend the Federal aviation regulations. For example, the Board is considering changes to the economic rules (14 CFR Part 298) that would allow larger aircraft to be used in air taxi operations. The FAA is now reviewing those proposals to determine what, if any, changes are appropriate in the safety rules.

One commenter wants the limits specified in the Airplane Flight Manual to determine the size of the airplane, the number of passengers and the payload for operations under § 135.2. This comment is discussed at length under § 135.1.

Two commenters state the definition of "maximum zero fuel weight" in § 135.2(e)(1) is not clear but did not elaborate. The definition of "maximum zero fuel weight" is defined in § 135.2(e)(3) and is the definition of 14 CFR 298.2.

Section 135.2(d) is advised to provide for compliance as discussed above.

§ 135.3 *Rules applicable to operations subject to this part. (Proposed § 135.3.)*

A sentence is added to § 135.3(b) to cite the incorporation of annex 2 by reference in § 91.1(c) and proposed paragraph (c) is withdrawn.

§ 135.5 *Certificate and operations specifications required. (Proposed § 135.7.)*

The commenter of § 135.5 states the limitations on the size of aircraft operated under part 135 should be determined under the Aircraft Flight Manual instead of specifying passenger seating configuration or payload in the rule. This comment is discussed at length under § 135.1.

§ 135.9 *Duration of certificate. (Proposed § 135.11.)*

Most commenters on § 135.9(a) suggest that the time for the certificate holder to return a revoked or suspended certificate should be 10 working days instead of 10 days. This comment has merit and the rule specifies no time for returning the certificate. Section 135.9(b) is added to provide for compliance as discussed above.

§ 135.10 *Compliance dates for certain rules. (New.)*

New § 135.10 is added to provide for compliance as discussed above.

§ 135.11 *Application and issue of certificate and operations specifications. (Proposed § 135.13.)*

Most commenters on § 135.11(b)(2) object to listing the "type" aircraft subject to the maintenance program in the certificate holder's operations specifications. They argue the rule is less flexible than the current rule. They claim delays will result when the operations specifications are amended to add or delete aircraft. They observe that they now must maintain a current list of aircraft that is available to the FAA on request. These comments have merit and this requirement is deleted. However, the make, model, and registration number of each aircraft that is subject to a continuous airworthiness maintenance program must be in the operations specifications to identify these aircraft to which the program applies.

Some commenters on § 135.11(b)(2) object to listing of registration numbers in the operations specifications regardless of the maintenance program required under part 135. Section 135.11(b)(2) requires this listing only for aircraft inspected under § 135.419 (an approved aircraft inspection program) or under § 135.411(a)(2) (a continuous airworthiness maintenance program). This is required under current part 135.

Several commenters on § 135.11(b)(2) object to listing "maintenance items required by the Administrator." Although they do not object to listing "time limitations," they argue the listing of maintenance items is not contained in comparable provisions of part 121. Listing additional maintenance items under § 135.11(b)(2) is limited, by reference to § 135.421, to those aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less. This rule is necessary because there now are no time limitations or standards for those items which must be part of a maintenance program under § 135.421.

One commenter states that § 135.11(b)(2) is ambiguous. The comment has merit and § 135.11(b)(2) is reorganized for clarity.

§ 135.13 *Eligibility for certificate and operations specifications. (Proposed § 135.15.)*

Commenters on § 135.13(b)(2) object because the rule prevents an otherwise competent individual from obtaining employment with an applicant for an ATCO operating certificate. Section 135.13(b)(2) is similar to § 121.51(b)(2). Noncompliance data is a significant factor to consider with an application for an ATCO operating certificate. Similar information has been helpful in evaluating air carrier applicants and the persons they propose for management positions. The FAA revokes an operating certificate only for a very serious infraction of the regulations. If a person contributes materially to that infraction, this fact should be considered as a factor in evaluating the new application. This does not mean the approval of the application or employment position will be automatically withheld, but that each situation will be carefully evaluated on its merits.

Some commenters recommend a time limit so an individual is not subject to a "life sentence" due to a past violation. This comment was carefully evaluated but it is too rigid and impractical. After an operating certificate is revoked the FAA evaluates the performance and reliability in aviation employment of the people involved over a reasonable period of time. This varies from case to case.

§ 135.19 *Emergency operations. (Proposed § 135.21.)*

One commenter on § 135.19 states that the FAA should request a report when a deviation occurs. The other commenter suggests the report should be filed in 10 working days. The FAA would not know when a deviation occurs in most cases and thus could not request a report. To allow greater flexibility in filing a report, the reporting period is changed to 10 days excluding Saturdays, Sundays, and Federal holidays.

§ 135.21 *Manual requirements. (Proposed § 135.23.)*

The proposed rule contained too many paragraphs and it is divided into two sections for simplicity. Section 135.21 contains only the manual requirements (proposed paragraphs (a) and (c) through (h)). Section 135.23 contains the manual contents (Proposed paragraph (b)).

Two commenters on § 135.23(a) claim the deviation authority would not be consistently applied by regional and district offices. This provision is in the current rule and is meant to provide relief for smaller operators. No administrative problems have been encountered in dealing with deviation requests in the past.

Several commenters object to the phrase "acceptable to the Administrator" in § 135.21(a) because it gives the FAA too much latitude regarding manuals and uniform nationwide adminis-

tration by the FAA will be a problem. Responsibility for determining whether a manual is acceptable insures that manual contents are correct, are not contrary to the rules and are adequate for the operations the certificate holder proposes to conduct. District offices have extensive experience in reviewing and accepting manuals.

Section 135.21(d) is changed so that a copy of the manual or appropriate portions must be "available" (not "furnished") to ground personnel to reduce the number of copies the certificate holder must prepare.

Section 135.21(g) is revised to allow a certificate holder who performs maintenance at specified stations to keep the appropriate sections of its manual at the station rather than carry it aboard the aircraft. The FAA believes this change is necessary since maintenance, in addition to inspections, may be performed at specified stations where a certificate holder provides the appropriate sections of its manual.

§ 135.23 *Manual contents. (Proposed § 135.23.)*

As discussed under § 135.21, new § 135.23 contains the rules on manual contents. Several commenters on § 135.23 object to requiring the manual to be in a form acceptable to the Administrator. They state the certificate holder should be responsible for the manual's form as long as it contains all of the required information. These comments have merit and that requirement is deleted.

Several commenters on § 135.23(a) state that "identity" requirement for management personnel is ambiguous. Section 135.37(a) identifies the management personnel required to be identified under § 135.23(a). Section 135.23 is clarified to reflect that.

Several commenters argue that § 135.23 (f), (g), and (h) are difficult to understand, should not be in the rules or should be in subpart J. These procedures are necessary in the certificate holder's manual for the pilot in command to report and record discrepencies, to determine the airworthiness status of the aircraft and to arrange for the maintenance or servicing of the aircraft. They are in current part 135.

Three commenters on § 135.23(p) state that the wording is excessive and unclear. This rule requires each certificate holder to train personnel to recognize hazardous material if presented for shipment even though the certificate holder has a policy prohibiting its carriage. This is the minimum training needed to recognize hazardous materials and limits the possibility of inadvertently carrying this material. Certificate holders who carry hazardous material need more extensive training to comply. Section 135.23(p) is revised for clarity.

The regulations of the Department of Transportation governing the transportation of hazardous materials in aircraft are in 49 CFR Parts 171 through 173 and 175. They are issued under the Hazardous Materials Transportation Act (49 U.S.C. 1801-1812). The Secretary of Transportation has delegated to the FAA Administrator (under 49 CFR 1.47(k)) the functions vested in the Secretary under sections 109, 110, and 111 of the Hazardous Materials Transportation Act relating to investigations, records, inspections, penalties, and specific relief for shipment of hazardous materials by air. The FAA's enforcement procedures for cases involving air transportation or shipment of hazardous materials are in part 13 of the Federal Aviation Regulations.

§ 135.25 *Aircraft requirements. (Proposed § 135.25.)*

Two commenters on § 135.25 state that certificate holders should have exclusive use of each aircraft used in their operation. They claim this provides adequate control for proper maintenance and use of the aircraft. Requiring operators to either own or have exclusive use of each aircraft they operate might be desirable. However, the current rule adequately insures proper control over maintenance and also is sufficiently flexible. A more stringent rule is not justified at this time.

One commenter states that § 135.25 should prohibit use of the same aircraft by two different air taxi operators. This practice is acceptable if the operator has a written agreement with the aircraft owner regarding its use which also deals with performing maintenance. If a certificate holder has an exclusive use agreement for an aircraft, that person may authorize another certificate holder to use it. However, only one certificate holder at a time can have an exclusive use contract for a given aircraft.

Another commenter states that § 135.25(b) is not necessary. This rule is in current part 135. There is no justification for changing it in the revision of part 135. An applicant or a certificate holder should reasonably expect to either own or have exclusive use of at least one aircraft and the rule provides positive control for both operation and maintenance of that aircraft.

§ 135.37 *Management personnel required. (Proposed § 135.39.)*

Commenters on § 135.37 object to the management requirements because sufficient justification was not presented, they lack provisions for the small operator and they overly complicate establishing and operating an air taxi operation.

Specific management personnel must be required in this revision of part 135. The increasing complexity of part 135 operations requires a management organization adequate to ensure that the operations are conducted safely. Different kinds and sizes of operations exist. Thus, § 135.37(a) is changed so the rule does not apply when the certificate holder is the only pilot. Also, § 135.37(b) provides for deviations. The Administrator may approve different positions or numbers of positions if the operation can be safely performed with fewer or different positions than § 135.37(a) requires. This flexibility also is necessary because of the varying size and complexity of part 135 operations. The FAA district office handles the request because they are familiar with the scope of the certificate holder's operation. Before approval, an evaluation is made to determine if a safe operation can be conducted.

Several commenters object to requiring the address of persons listed in § 135.37(c)(2). This comment has merit and the requirement is deleted.

One commenter states § 135.37 is more stringent than similar requirements in part 121, but fails to explain that contention.

§ 135.39 *Management personnel qualifications. (Proposed § 135.41.)*

Commenters on §§ 135.39 (a) and (b) object to requiring the director of operations and the chief pilot to hold an airline transport pilot (ATP) certificate. Most of these comments are from small operators or operators who are not authorized to operate under IFR. Not all types of operations require an ATP certificate (see § 135.243(a)). ATP certificates are required for the pilot in command in passenger-carrying operations of turbojet airplanes, multiengine airplanes operated by commuter air carriers and airplanes with a passenger seating configuration, excluding any pilot seat, of 10 or more. The pilot in command of any other operation must hold only a commercial pilot certificate with an instrument rating. The same concept that applies to pilot in command standards should apply to management personnel qualifications.

The director of operations must hold or have held a pilot certificate equal to the chief pilot's for the operations the certificate holder conducts. Although the pilot certificate an individual holds does not reflect the person's management capability, the holder of an ATP certificate has the broader operational background necessary for a more complex operation. Thus, if the certificate holder conducts any operation requiring the pilot in com-

mand to hold an ATP certificate, then the director of operations and the chief pilot must have an ATP certificate. If the certificate holder does not conduct an operation requiring the pilot in command to hold an ATP certificate, then the director of operation and the chief pilot must have only a commercial pilot certificate.

Some commenters claim requiring the director of operations to hold an ATP certificate precludes the use of highly qualified persons who cannot meet first-class medical certification requirements. These commenters suggest the rule allow a person to serve as director of operations if that person has held an ATP certificate in the past. This comment has merit and the rule is changed to allow that.

Many commenters object to requiring both the director of operations and chief pilot to "know" the contents of the manual. They claim this implies that the person must be able to quote the manual verbatim. They state the rule may create liability problems. They recommend the word "familiar" be used instead of "know". The director of operations and the chief pilot should have a good working knowledge of the manual contents and be more than merely "familiar" with it. A larger and more complex certificate holder normally has a director of maintenance who meets the qualifications of § 135.39(c) even when the certificate holder has no maintenance facility and accomplishes its maintenance under contract. The management responsibility is sufficiently complex to require this standard to be met unless the certificate holder shows that a deviation would not compromise safety.

Many commenters on § 135.39(b)(3) state that requiring the director of maintenance to have 1 year of current experience in the "type" of aircraft used by the certificate holder is burdensome. Under part 1, "type" means make and model. The make and model of aircraft used in air taxi operations are changed frequently. The comments have merit and the words "category and class" are substituted for the word "type."

§ 135.43 *Crewmember certificate: International operations: application and issue.* (*Proposed § 135.45.*)

Commenters object to § 135.43 because it is unnecessary and requires additional paperwork. There is an increasing amount of international activity by U.S. air taxi operators. The crewmember certificate is a convenient means to identify U.S. crewmembers. The certification process is brief and is not necessary unless the operator believes that it would benefit crewmembers. A similar system exists in part 121. However, the proposed rule requires reissuance of a certificate at the conclusion of each assignment. Section 135.43(c) is revised to allow the crewmember to retain the certificate until employment with the certificate holder terminates. Also, § 135.43(c) allows the holder to submit the certificate for cancellation to the Airman Certification Branch, Oklahoma City, Okla.

SUBPART B—FLIGHT OPERATIONS

§ 135.63 *Recordkeeping requirements.* (*Proposed § 135.49.*)

Most commenters on § 135.63 oppose it. They mainly object to flight and duty time recordkeeping under § 135.63(a)(4)(vii) contending that the rule is too stringent, cannot be equally enforced, is structured for air carrier operations, should not apply to on-demand operators, and imposes an undue burden on certificate holders having two or more pilots. Since flight and duty time limitations proposals have been deferred, associated changes in recordkeeping requirements are also deferred.

The commenters do not cite adequate examples in support of their position. A primary objective of the rule is to produce the minimum records needed for the FAA to objectively judge compliance with the Federal Aviation Regulations and thus insure safety in part 135 operations. These records also provide information that is necessary to conduct daily operations to schedule crews and maintenance and to conduct other activities where current data is needed to operate safely. The rule requires some additional recordkeeping, but that is justified by the broader scope of air taxi operations under revised part 135. This is minimal and is not an undue burden. It is necessary for operators to maintain a safe operation and for the FAA to monitor the operator and to conduct surveillance.

Other commenters object to extending the record retention period to 12 months in § 135.63(b). These comments have merit. The pilot records specified in § 135.63(a)(4) must be kept for at least 12 months to establish a continuity for dates and results of competency and proficiency checks. Some pilots used in part 135 operations must take competency checks only once in each 12-month period under § 135.293(b). A record is necessary to establish that they have accomplished the required check until the next check. Section 135.63(b) is changed to require retention of § 135.63(a)(3) records for at least 6 months and § 135.63(a)(4) records for at least 12 months.

Commenters on § 135.63 (c) and (d) object to preparing a load manifest for multiengine aircraft. They also object to mailing (at the takeoff airport) a copy to the certificate holder or retaining a copy at the airport until completion of the flight. They argue that this generates more paperwork and that many airports have neither mail facilities nor a place to keep a copy of the manifest. Safety requires preparation of a load manifest for multiengine aircraft. The loading characteristics are critical for many multiengine aircraft now in use, or that will be used under revised part 135. Requiring a load manifest be completed before each takeoff insures that critical loading factors for multiengine aircraft are reviewed and the maximum weight and center of gravity are within approved limits. Because the mailing or retention requirement may impose a hardship on some certificate holders, that requirement is deleted. The last sentence of proposed § 135.63(c)(5) is revised to be consistent with the first sentence ("to a loading schedule or other approved method"). Also, § 135.63(a)(4)(i) is revised to be consistent with subpart G.

§ 135.65 *Reporting of mechanical irregularities.* (*Proposed § 135.53.*)

Several commenters on § 135.65 state that they would welcome a rule patterned on §§ 121.563 and 121.701, but many of their objections also would apply to those sections. Several commenters want an explanation of the difference between a maintenance "log" under § 135.65 (a), (b), and (c) and a maintenance "record" under § 135.65(d). The maintenance "log" is a maintenance "record" as the term is used in § 135.65(d).

Other commenters contend that the rule requires the keeping of duplicate aircraft records. Section 135.65 governs the recording, deferral, and correction of mechanical irregularities on aircraft used under part 135. The rule provides appropriate flight and maintenance personnel with a record of the continuing mechanical performance of the aircraft. Section 135.3(a) applies § 91.173 to operations under part 135. Thus, §§ 91.173 and 135.439 collectively govern all inspections, maintenance, repairs, and alterations under part 135.

Some commenters contend that § 135.65(d) means that the maintenance "log" must be kept aboard an aircraft "forever." Section 135.65(d) requires only that each certificate holder must have a procedure in its manual for keeping copies of the maintenance log in the aircraft. It is intended that this procedure provide for presence in the aircraft of maintenance information necessary for safe operation of a particular flight. It is not intended that unnecessary information be retained in the aircraft.

Several commenters contend that requiring small operators to keep de-

tailed records is a significant burden. No substantial evidence was presented to support that claim. The rule increases the awareness of the certificate holder and its flight and ground personnel concerning the mechanical performance of each aircraft. This rule assists the certificate holder in executing its primary responsibility for maintaining its aircraft in an airworthy condition and in accordance with its manual. This rule also helps insure that mechanical irregularities are noted and corrected without delay.

Several commenters object to § 135.65(b) requiring a flight crewmember to log each irregularity noted and then to look at the same irregularity after landing. The rule is changed to eliminate that. Several other commenters suggest that the words "before each flight" be used in § 135.65(b) and this change also is made. Section 135.65(c) is revised to clearly require a description of the recordation, deferral, or corrective action taken as to a mechanical irregularity in accordance with part 43. Section 135.65(d) is revised to clearly require the aircraft maintenance log to be carried on board the aircraft to which it applies.

§ 135.67 *Reporting potentially hazardous meteorological conditions and irregularities of communications or navigation facilities. (Proposed § 135.55.)*

Almost all commenters on § 135.67 oppose it but agree that it represents good operating practice. They suggest that a good operating practice should not be a regulation but rather a part of the Airman's Information Manual or an advisory circular. Several commenters contend that § 91.125 makes § 135.67 unnecessary. Section 91.125 applies only to flight under IFR in controlled airspace. Section 135.67 applies to all operations conducted under part 135. The rule enhances safety and is consistent with the effort to improve the level of safety in part 135 operations. A similar rule, in part 121, works to insure that these conditions and irregularities are reported and no problems of compliance exist.

§ 135.69 *Restriction or suspension of operations: Continuation of flight in an emergency. (Proposed § 135.57.)*

Commenters on § 135.69(b) recommend that the rule allow a flight to continue toward an airport when the certificate holder or the pilot in command has reasonable assurance that the hazardous condition will be corrected by the estimated time of arrival and that a suitable alternate airport is available to the flight. Another commenter contends that a routine occurrence (for example, a deer on the runway) will give rise to an "emergency" and a report would have to be filed under § 135.19. The first comment has merit if continuation of the flight does not constitute an emergency under § 135.19. However, an alternate airport is not necessary in this situation. Section 135.69(b) is revised to allow this. The change also resolves the concerns of the second commenter.

§ 135.75 *Inspectors credentials: Admission to pilots compartment: forward observer's seat. (Proposed § 135.63.)*

Commenters on § 135.75 are concerned that FAA inspectors would, without notice, "bump" revenue passengers or cause cargo to be removed from the aircraft to accommodate them. They are needlessly alarmed. Proposed en route inspections are coordinated with the certificate holder well ahead of the proposed schedule to avoid, if at all possible, the need for an inspector to occupy a revenue passenger seat. For the FAA to properly discharge its responsibilities to the public, however, FAA inspectors must have the authority for access to the pilot compartment of an aircraft operated under revised part 135.

Some commenters on § 135.75(a) believe that a provision like § 121.547 should be added to indicate that the pilot in command has the authority to exclude any person from the flight deck in the interest of safety. This comment has merit and § 135.75(a) is changed to reflect that.

Some commenters on § 135.75(b) believe the words "appropriate communications equipment" provided for the inspector, mean complete transmitting and receiving capability. They suggest that the language be changed to require only equipment necessary to monitor ATC communications. Section 135.75(b) makes it clear that either a headset or a speaker for the inspector to monitor crew communications is required but that a transmitter is not.

§ 135.77 *Responsibility for operational control. (Proposed § 135.65.)*

Many commenters on § 135.77 ask what the term "operational control" means. "Operational control" is defined in Part 1. Section 135.77 states that the certificate holder is responsible for operational control, but may delegate authority to exercise operational control to another person. This delegation of authority does not relieve the certificate holder of the responsibility for operational control.

Some commenters object to listing each person who exercises operational control for the certificate holder. Operational experience under part 121 shows that this does not lead to an unreasonable number of revisions to manuals.

One commenter states that § 135.77 appears to be more stringent than § 121.537. Section 121.537 requires supplemental air carriers and commercial operators to list each person authorized to exercise operational control, just as § 135.77 does. Section 135.77 is clarified to require the name and title of each person authorized by the certificate holder to exercise operational control to be listed in the manual.

Several commenters believe that authority to exercise operational control confers a labor provision but did not explain their position. The FAA has reviewed this provision in light of this comment. This section provides that the certificate holder is responsible for operational control and must list in the manual the name and title of each person authorized to exercise operational control. The rule does not restrict the certificate holder's exercise of judgment in determining who is authorized to exercise operational control.

§ 135.81 *Informing personnel of operational information and appropriate changes. (Proposed § 135.69.)*

Many commenters on § 135.81 object to proposed paragraph (b). They state that the rule is unacceptable and unmanageable. Some commenters argue the rule will increase the operator's liability but do not explain why. Other commenters suggest changes to make the rule more acceptable. These comments have merit because part 135 does not contain flight following rules and there is no practical means to update the information once a flight departs. Proposed paragraph (b) is withdrawn. Section 135.81(a) is changed to allow use of chart supplements in Alaska and the Pacific instead of the Airman's Information Manual. Section 135.81(c) is revised for consistency.

§ 135.85 *Carriage of persons without compliance with the passenger-carrying provisions of this part. (Proposed § 135.73.)*

Commenters on § 135.85 suggest that proposed paragraph (b) read, "company employee." This comment has merit and the narrow change suggested gives greater flexibility to the operator without compromising safety. The words, "or other employee of the certificate holder" are added to § 135.85(a) and proposed paragraph (b) is withdrawn.

Commenters recommend additional categories of persons who could be carried aboard an aircraft without meeting the passenger-carrying requirements of part 135. Additional exceptions to passenger-carrying requirements beyond the limited exception made above would not be in the public interest and would compromise safety.

§ 135.87 *Carriage of cargo including carry-on baggage. (Proposed § 135.75.)*

Two commenters on § 135.87 object because the rule applies to "any" aircraft. One suggest the section apply to aircraft carrying 10 passengers or more. The other suggests the section apply to aircraft carrying 20 passengers or more. Section 135.87 applies to any aircraft carrying cargo, including carry-on baggage, under part 135. The ability to store carry-on baggage in the passenger compartment of an aircraft certificated under part 25 often is greater than the ability to store carry-on baggage in the passenger compartment of an aircraft certificated under part 23. Loose items in the aisle or at the passenger's feet during flight under part 135 are a potential hazard to occupants of the aircraft in the event of an emergency evacuation.

One commenter objects because the rule is "unrealistic and mechanically impossible because of seat size and design" in small aircraft. If the seat size or design of an aircraft makes the storage of carry-on baggage items beneath the seats on that aircraft impossible or impractical, then those items may not be placed beneath the seats. If the aircraft seat size and design allows the storage of carry-on baggage items beneath the seat, then the certificate holder may allow under-seat storage. If this is done, then the seats must be fitted with a means to prevent articles stowed under them from sliding under crash impacts severe enough to produce the ultimate inertia forces specified in the emergency landing condition regulation under which the aircraft is certificated. The certification criteria in both §§ 23.561 and 25.561 require consideration for forward, sideward and downward motion. Part 135 does not require use of the under-seat area for stowing carry-on baggage, but that is allowed if the stated conditions are met. The rule is changed to clearly reflect its applicability to carry-on baggage. Also, the word "forward" is deleted in § 135.87(d).

One commenter states that it knows of no occasion in which the aisle of an aircraft was blocked by the placement of carry-on baggage. This commenter also states that it is difficult to believe that carry-on baggage could or would hinder the emergency evacuation of a small aircraft such as a four-passenger single-engine airplane. Section 135.87 insures that occupants aboard an aircraft are afforded the highest safety protection reasonably commensurate with the least possible burden. Passengers of an aircraft operated under part 135 should not needlessly be injured by unstowed items and should be able to exit the aircraft as rapidly as possible in the event of a survivable accident. Proper stowage of articles can prevent injuries from flying objects during air turbulence. Section 135.87(c)(1) is changed to distinguish between securing cargo and securing carry-on baggage.

One commenter states § 135.87(e) is unclear and recommends deletion. The rule has been reviewed and it is clear. It prohibits persons from loading cargo in a way that prevents a crewmember from extinguishing a fire in flight.

§ 135.89 *Pilot requirements: Use of oxygen. (Proposed § 135.77.)*

Some commenters oppose combining the requirements for pressurized and unpressurized aircraft. They urge retaining the current requirements. Inherent differences exist in operating characteristics between pressurized and unpressurized aircraft. A distinction should be made between them. Current § 135.77 contains requirements for pilot's use of oxygen and current § 135.129 contains oxygen equipment requirements. Both have separate provisions for pressurized and unpressurized aircraft. Section 135.89 is revised to carry forward this distinction, is limited to the use of oxygen only for pilots and the title is changed. Passenger oxygen equipment requirements are adopted in § 135.157.

Two commenters state § 135.89 should require that at least one pilot must wear an oxygen mask whenever a pressurized aircraft is operating above flight level 350. They cite the potential for rapid depressurization in a relatively small volume aircraft. This comment has merit and § 135.89 remains essentially the same as the current § 135.83.

§ 135.91 *Oxygen for medical use by passengers. (Proposed § 135.79.)*

One commenter on § 135.91 believes the rule should require maintenance of liquid type oxygen only. The problem of possible internal contamination exists with both liquid and gaseous oxygen containers.

One commenter on § 135.91(a)(1)(i) suggests that the rule require the equipment to be both an approved type and in conformity with title 49 CFR because more than one standard appears to be required. Another commenter states § 135.91(a)(1)(i) was not necessary. The rule is more flexible because the certificate holder may either get FAA approval or meet the requirements of Title 49 CFR Parts 171, 172, and 173, except § 173.24(a)(1). Either standard of safety is acceptable for the safe carriage and operation of medical oxygen.

§ 135.93 *Autopilot: Minimum altitudes for use. (Proposed § 135.81.)*

Some airplanes with autopilots do not have, and are not required to have, an airplane flight manual. To reflect this, the words "approved airplane flight manual or equivalent" are used in § 135.93. The words "en route" are deleted from § 135.93(a) because the rule applies to all operations other than approaches.

The rule is rewritten for clarity. Proposed paragraphs (b)(1), (b)(2), and (c) are adopted as §§ 135.93 (b), (c), and (d), respectively. Section 135.93(b) provides for instrument approaches other than ILS. Section 135.93(c) provides for ILS approaches with an approach coupler.

§ 135.95 *Airmen: Limitations on use of services. (Proposed § 135.83.)*

Nearly all of the commenters on proposed paragraph (a)(2) oppose it because it is redundant and because it duplicates §§ 61.3 (a) and (c). They argue that requiring a certificate holder to inspect a pilot's certificate before each operation is unreasonable and will be difficult, if not impossible, to administer. These comments have merit and proposed paragraph (a)(2) is withdrawn.

§ 135.103 *Exception to second in command requirement: IFR operations. (Proposed § 135.91.)*

Commenters on § 135.103 state that it is not understandable, needs to be revised or withdrawn completely, is inappropriate for multiengine aircraft and is frequently abused. The comments of the National Transportation Safety Board cite the field investigation phase of the Board's "Air Taxi Study" (NTSB-AAS 72-9). The Board's comments are similar to others. The Board recommends that § 135.103 either be removed from the rules or rewritten so it is not misunderstood or misapplied.

Current § 135.75 provides flexibility to part 135 operators by allowing limited IFR operations without a second in command. Experience under part 135 shows these operations can be conducted safely. The rule continues to allow them. The comments recommending clarification of this rule have merit. Section 135.103 is rewritten to make it clearer, simpler, and easier to meet. This should make flight planning easier. Sections 135.103 (a), (b), and (c) contain the rules for takeoff, en route and approach operations, respectively. Section 135.103(d) contains the general requirements for the aircraft, pilot and ATC clearances.

Section 135.105(a) is clarified to reflect that a second in command is always required under §§ 135.99 and 135.105.

§ 135.105 *Exception to second in command requirement: Approval for use of autopilot system. (Proposed § 135.93.)*

One commenter on § 135.105 claims the use of an autopilot is no substitute for the increased safety margin two pilots afford for communications, navigation, system monitoring and emergency situations, especially in multiengine aircraft. Section 135.105(c)(2) requires each certificate holder to show that operations using an autopilot can be conducted safely. The commenter presents insufficient evidence of adverse operational experience in single-pilot operations with an autopilot to justify withdrawal of the rule.

One commenter objects to § 135.105(b) because the operations specifications must be amended each time there is a change in aircraft. The commenter believes this is unnecessarily complicated. This comment has merit and that part of § 135.105(b) is withdrawn.

§ 135.109 *Pilot in command or second in command: Designation required.* (*Proposed § 135.97.*)

Although adoption of subpart F is deferred as discussed there, proposed § 135.215(a) is more germane to flight operations than to flight time limitations. The rule is adopted as § 135.109(b).

§ 135.115 *Manipulation of controls.* (*Proposed § 135.103.*)

Several commenters on § 135.115(a) suggest that a pilot who manipulates the controls should be qualified in that aircraft. This comment has merit and § 135.115(a) is revised.

One commenter on § 135.115(b) asserts a pilot in command cannot determine whether an authorized safety representative of the Administrator can safely handle the controls of an aircraft. The pilot in command may make any reasonable inquiries which are deemed necessary to ascertain pilot qualifications. Another commenter contends that a safety representative of the Administrator should not manipulate the controls during a passenger-carrying flight. Section 135.115(b) is similar to § 121.545(b) which has not created any problems since it was adopted in 1967.

One commenter opposes the rule because the pilot in command should insure no unauthorized person manipulates the controls. Another commenter suggests the rule allow a prospective aircraft purchaser who is appropriately rated to manipulate the controls. Safety requires strict control of these actions during those flights and additional exceptions are not justified.

One commenter asks what "qualified in the aircraft" means. A person is qualified in the aircraft if that person holds a pilot certificate with the appropriate category, class, and type rating for the aircraft operated and also meets the recency of experience requirements for that aircraft.

§ 135.117 *Briefing of passengers before flight.* (*Proposed § 135.105.*)

Most commenters on § 135.117(a) object to the word "orally" and assert that printed briefing cards are satisfactory and do not compromise safety. Commenters also contend the rule is more restrictive than part 121 but present no other rationale. Part 121 requires oral briefing of passengers before takeoff. An oral briefing insures that passengers are adequately informed of basic information essential to their safety.

Other commenters are concerned that §§ 135.117(a) (4), (6), and (8) mean that actual demonstrations are required to show the mechanical means for opening doors and exits, the use of flotation gear, and the operation of fire extinguishers. Section 135.117(a) requires only that the pilot in command insure that passengers are orally briefed.

Two commenters state the rule should use the word "crewmember" instead of "pilot in command." The pilot in command is responsible for the operation and safety of the aircraft during flight time. The pilot in command should also be responsible for the briefing before the flight.

The National Transportation Safety Board states that the rule should require both oral briefings and printed cards. The information required under § 135.117(c) (1) and (2) should be available in the form of printed cards to insure clear communication of detailed information. The Board's comments have merit and § 135.117(c) is changed to accomplish this.

Other commenters note that "10,000 feet" in § 135.117(a)(7) should be "12,000 feet" for consistency with other rules in part 135. The comment has merit and the rule is changed.

§ 135.121 *Alcoholic beverages.* (*Proposed § 135.109.*)

Proposed paragraph (d) requires operators to report within 5 days certain incidents under § 135.121. The requirement was established in current § 135.115 to enable the FAA to determine if changes to the rule would be needed to control the conduct of passengers. The report has served its purpose and is no longer necessary. Proposed paragraph (d) is withdrawn.

§ 135.123 *Emergency and emergency evacuation duties.* (*Proposed § 135.113.*)

Most commenters object to the words "shall show" in § 135.123(a) because showing each emergency function can be accomplished is unreasonable and impractical. This comment has merit and the word "insure" is substituted for the word "show." Proposed paragraph (b) is withdrawn because it duplicates § 135.21(b)(13).

SUBPART C—AIRCRAFT AND EQUIPMENT

§ 135.143 *General requirements.* (*Proposed § 135.117.*)

The few commenters on § 135.143(b) were confused by the words "for single engine aircraft." These words are unnecessary and are deleted. However, § 135.179 provides for a minimum equipment list for multiengine aircraft and that is an exception to § 135.143(b). To make that clear, the lead-in phrase of that paragraph is changed to read: "Except as provided in § 135.179, no person may operate an aircraft * * *"

§ 135.145 *Aircraft proving tests.* (*Proposed § 135.121.*)

The language of §§ 135.145 (a) and (c) is not parallel. To correct this, the phrase "is not considered to be of similar design" is used in § 135.145(c) instead of the phrase "is considered to be materially altered in design." Also, proposed paragraph (d) is obsolete and is withdrawn.

§ 135.149 *Equipment requirements: General.* (*Proposed § 135.125.*)

A few commenters oppose requiring a third attitude gyro for turbojet airplanes because it is an unacceptable economic burden and it is unnecessary when the aircraft already has two of them, each on a different power source. The third attitude gyro is necessary to provide a margin of safety not otherwise available if the primary instrument system fails. This requirement is retained. Section 135.149(c) is revised to make clear that this third instrument must be electrically powered.

Other commenters object to requiring a lockable door. They state that a locked door has not deterred hijackers of large, air carrier aircraft and that a locked door reduces the possibility of safe egress of passengers under certain conditions after an accident. After reviewing the cost of installing the lockable door against the resulting benefits, the FAA is persuaded that the requirement does not contribute significantly to safety in part 135 operations. The interior design of some aircraft makes installation difficult and expensive to complete. Although the proposal is withdrawn, the FAA encourages operators to not remove a lockable door now installed and to continue to use it.

One commenter suggests that the public address system requirement should apply only to operators of multiengine aircraft under 14 CFR Part 298. Another commenter believes that the distinction should be at the 10 passenger seat level, not at the 19 passenger seat level. Amendment 121-105 (38

FR 21493; Aug. 9, 1973) requires airplanes having a passenger seating capacity of more than 19 to be equipped with an approved public address system and interphone system. Under current § 135.2, this amendment applies to part 135 operators using large airplanes that have a passenger seating capacity greater than 19. Section 135.149(d) achieves consistency in part 135 by not differentiating between small and large aircraft but by using a 19 passenger seating configuration as the dividing point. In smaller aircraft, the crew can easily communicate with the passengers without the use of a public address system and interphone system.

One commenter expresses concern that § 135.149(e) is too open-ended, allows individual FAA inspectors to make arbitrary decisions, and gives them unlimited authority to require any type equipment. The rule gives the Administrator flexibility to require any additional equipment which is necessary in the interest of safety. Specific guidance is furnished to FAA inspectors about the administration of § 135.149.

§ 135.151 *Cockpit voice recorders. (Proposed § 135.125.)*

The majority of commenters strongly oppose requiring a cockpit voice recorder (CVR) and a flight data recorder (FDR). The reasons they cite are: The CVR and FDR impose unacceptable economic burden; they cause aircraft to be out of service during equipment repair; and they provide information for accident investigations "after the fact" and thus do not enhance the safety of a particular flight.

On the other hand, the National Transportation Safety Board recommends that the CVR and FDR requirements should apply to all aircraft capable of carrying 10 or more passengers. The Board states that the data obtained from the CVR and FDR has enabled it to determine the causes of airframe and system failures, environmental effects and operational deficiencies. The Board states that this has led to corrective actions in operational and air traffic control and in product design. The Board mentions that the inability to accurately determine the cause of an accident may result in liability to the manufacturer, the operator, or the Federal Government. One commenter supports the CVR and FDR for scheduled commuter operators because of the importance these devices have in determining the probable cause of an accident. Another commenter believes the CVR has more potential usefulness in accident investigations.

Certain benefits could be realized by the use of the CVR and FDR. The commenters cite no accidents involving commuter aircraft or aircraft capable of carrying 10 or more passengers in which the FDR and CVR information was essential to determining the probable cause of the accident. Experience during accident investigation shows the flight path of an aircraft can be duplicated without the aid of FDR data. On the other hand, CVR recordings provide information about crewmember actions in the pilot compartment before the accident and this record is not otherwise available. Also, CVR equipment is lighter in weight and less costly than FDR equipment.

Considering all the comments received, the justification submitted opposing the FDR requirement, and an analysis of the costs versus benefits, safety of flight is not compromised by withdrawing the requirement for a FDR. However, considering the comments, justification and cost versus benefits of the CVR, and the fact that the CVR provides an acceptable level of accident investigation information for turbojet airplanes with 10 or more passenger seats, the requirement for the CVR is retained in new § 135.151.

§ 135.153 *Ground proximity warning system. (Proposed § 135.125.)*

The majority of the comments received oppose the requirement for a ground proximity warning system (GPWS) because it is not justified based on benefit versus cost. They also state the GPWS has a history of poor performance. One commenter states that all commuter aircraft should be equipped with a CPWS. Another commenter states that a GPWS should be required on all aircraft capable of carrying 10 or more passengers, not just turbojet airplanes of that size.

The GPWS of today reflects the state-of-the-art. Reliable systems are available and their maintenance should pose no significant problem or require excessive downtime. Further, the GPWS contributes directly to the safety of flight. Experience demonstrates that the GPWS is beneficial as a warning device for crews to avoid accidents in large aircraft operations under part 121. Because of the complexity, size, speed, and flight performance characteristics of turbojet airplanes, a GPWS is required for turbojet airplanes with 10 or more passenger seats in new § 135.153. To give more flexibility to the certificate holder, § 135.153(b) allows the use of an alternate warning system to that approved under § 37.201. The alternate system must have the approval of the Director, Flight Standards Service.

Although limited benefits might be realized by requiring the GPWS in all aircraft, installation of the GPWS in smaller aircraft is not warranted at this time based on the cost of installation, maintenance, and operating weight penalties.

§ 135.155 *Fire extinguishers: Passenger-carrying aircraft. (Proposed § 135.127.)*

Most commenters on § 135.155 object to requiring two fire extinguishers in aircraft having a passenger seating configuration of more than 6 but less than 31. Operators now using aircraft carrying six passengers state that the cabin configuration gives the crew easy access to the passenger area in an emergency. The majority of the commenters state that the rule should require two fire extinguishers onboard an aircraft with a passenger seating configuration of 10 or more. Some commenters observe that only one fire extinguisher is needed if it is accessible to both crew and passengers. Others believe the rule should specify the least toxic agent must be used. Comments received on a proposed amendment to current § 135.161 in Notice 76-28 (41 FR 56280; Dec. 27, 1976) were also considered.

Only one fire extinguisher is necessary on an aircraft having a passenger seating configuration of nine or less. It is accessible to passengers or the crew in this size aircraft. However, safety requires two fire extinguishers on an aircraft having a passenger seating configuration of 10 or more, so the extinguishers are readily accessible to crewmembers or passengers.

The matter of toxicity is best left to the judgment of the operator. Many different extinguishing agents exist. Each has its own distinct advantages. With proper procedures and precautions, some toxic fire extinguishing agents can be used effectively. Of course, there is control because the FAA approves the type of fire extinguisher used.

§ 135.157 *Oxygen equipment requirements. (Proposed § 135.129.)*

Some commenters oppose combining the requirements for pressurized and unpressurized aircraft. They urge retaining the current requirements. The commenters also state that if the rule is adopted, certain pressurized aircraft now in service would require costly modifications which are not justified in the interest of safety. Inherent differences exist in operating characteristics between pressurized and unpressurized aircraft. A distinction should be made between them. Current § 135.77 contains requirements for pilot's use of oxygen and current § 135.129 contains oxygen equipment requirements. Both have separate provisions for pressurized and unpressurized aircraft. Section 135.157 is revised to carry forward this distinction.

Several commenters object to requiring pressure demand oxygen breathing equipment. Other commenters note

the rule includes design criteria for oxygen systems already included in parts 23 and 25. The requirement should not be in the operating rules and it is withdrawn.

Numerous commenters object to requiring supplemental oxygen for each passenger above 12,000 feet MSL. These comments have merit and § 135.157(a) is revised to require that 10 percent of the occupants (other than a pilot) must have supplemental oxygen between 10,000 feet and 15,000 feet MSL. Each occupant (other than a pilot) must have supplemental oxygen above 15,000 feet MSL. This parallels current §§ 121.327(c) and 121.329(c).

Section 135.157(b)(1) is adopted in this subpart instead of in § 135.89 because it is a passenger oxygen equipment requirement.

One commenter states § 135.157(c)(3), which allows the flight crewmembers to use undiluted oxygen at their discretion, requires the replacement of crew masks. The commenter claims this is an unreasonable burden. Allowing the flight crewmember to select undiluted oxygen may be a burden to an operator who now uses continuous flow systems which do not have this design feature. However, the potential need for the pilots to select undiluted oxygen is significant at altitudes above 25,000 feet. Thus, § 135.157(c)(3) requires the oxygen equipment to have a means to allow the pilots to use undiluted oxygen at their discretion at altitudes above 25,000 feet.

§ 135.159 *Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions. (Proposed § 135.131.)*

Most commenters on § 135.159 oppose applying the gyroscopic instrument (gyro) requirement to helicopters. They cite the economic burden resulting from the acquisition, installation, and maintenance of gyros which are not now required for helicopter VFR operations. Only a relatively small percentage of the helicopter operators conduct VFR night or over-the-top operations. The cost of this additional equipment would not be large because of the small number of aircraft affected. The installation cost for each helicopter is not high.

Some commenters note that the history of helicopter operations does not support this rule. To provide an acceptable level of safety in passenger-carrying operations, a helicopter must be controllable during loss of visual ground reference.

New § 135.159(f) is added for clarity and contains the last sentence in paragraph (e)(3) proposed in notice 77-17.

§ 135.161 *Radio and navigational equipment: Carrying passengers under VFR at night or under VFR over-the-top. (Proposed § 135.133.)*

Most commenters on § 135.161 oppose requiring radio and navigational equipment for helicopters operating under VFR at night. They claim that the limited range of helicopter operations makes radio and navigational equipment unnecessary for safety and that the acquisition and installation of that equipment is an undue economic burden. The requirement for radio navigational equipment for helicopter VFR night operations is not necessary and § 135.133 is changed to reflect that. However, helicopter VFR over-the-top night operations must be equipped with proper radio and navigational equipment to provide an appropriate level of safety in passenger-carrying operations.

§ 135.163 *Equipment requirements: Aircraft carrying passengers under IFR. (Proposed § 135.135.)*

One commenter on § 135.163 notes that an acceptable practice is to mount generators on the main transmission of helicopters, rather than on the engine. Section 135.163(g) is revised to allow this.

Other commenters state that § 135.163 prohibits "splitting" gyro instruments between electrical and vacuum sources and that defeats safety. For instrument panels with both electric and vacuum instruments, a pump or generator is unable to drive all gyroscopic instruments. The pilot must be able to select an energy source which will drive all gyros if the other source fails. Anything less under IFR conditions would derogate safety. Where a split panel is desired, each engine must have both a generator and a vacuum pump.

§ 135.165 *Radio and navigational equipment: Extended overwater or IFR operations. (Proposed § 135.137.)*

One commenter on § 135.165 requests relief for inoperative equipment so that a flight does not have to be terminated. The commenter suggests that deviation be allowed or that the minimum equipment list in § 135.179 apply. The equipment in § 135.165 is essential to safe extended overwater and IFR operations. The need for maintaining communications during these operations is essential.

Another commenter states some radio equipment is unable to transmit and receive from at least one ground facility in certain remote areas. This may occur, but safety requires that this communications and navigational capability exist during extended overwater and IFR operations.

One commenter asks why two radio transmitters are required under § 135.165(a)(1) when only one is required under part 121. Two transmitters are required under part 121. To provide equipment flexibility, § 135.165(a)(5) no longer requires the navigational receivers to be VOR receivers.

§ 135.167 *Emergency equipment: Extended overwater operations. (Proposed § 135.139.)*

One commenter states that § 135.167(a)(1) should read "an approved life preserver." The word "approved" is added.

One commenter believes that "other flotation means" should not be allowed in place of life preservers. Another commenter states that "other approved flotation devices" derogate safety but provides no rationale. Other flotation means (such as buoyant seat cushions) are approved so safety is not compromised when they are used. The rule clearly requires that a life preserver or other flotation means be easily accessible to the occupants. If a flotation means other than a life preserver is used, it must be readily removable from the aircraft.

§ 135.169 *Additional airworthiness requirements. (Proposed § 135.141.)*

Notice 77-17A (42 FR 56702; October 27, 1977) withdrew proposed paragraph (e). The same day, the FAA issued advance notice of proposed rulemaking 77-25 (42 FR 56702; October 27, 1977) requesting recommendations concerning possible changes in certification requirements for certain small airplanes used in part 135 operations.

Proposed paragraph (c) prohibited the introduction of a new small airplane, with a passenger seating configuration of 10 or more, into part 135 operation after August 19, 1977, unless that airplane was type certificated in the transport category. That proposal is withdrawn at this time. This issue will be considered in the rulemaking based on the public response to notice 77-25.

For nonpart 25 small airplanes type certificated for 10 or more seats, proposed paragraph (d) prohibited an increase in the passenger seating configuration in part 135 operations above the number of seats approved for part 135 service prior to August 19, 1977. As adopted, § 135.169(c) also allows seating increases up to 19 seats, if the airplane is shown to comply with appendix A. This change allows operators to increase the number of passenger seats in their existing airplanes, but requires them to demonstrate compliance with the additional airworthiness requirements in appendix A. The rule advances safety in part 135 operation while not unduly inhabiting the growth of the air taxi industry. The FAA expects to propose rules based on notice 77-25 in the near future and

may be considered further during that rulemaking.

§ 135.171 *Shoulder harness installation at flight crewmember stations. (Proposed § 135.143.)*

A few commenters on § 135.171 suggest that the shoulder harness requirement apply to all operations under part 135. This alternative was considered during the development of notice 77-17, but the study revealed this action would have a significant economic impact on part 135 operators. Therefore, § 135.171 is limited to turbojets and larger passenger-carrying airplanes (10 seats or more). Section 91.33(b)(13) requires each standard category small airplane manufactured after July 18, 1978, to have both front seats equipped with shoulder harnesses. If an airplane is equipped with a shoulder harness, a flight crewmember must fasten the shoulder harness for each takeoff and landing unless the crewmember cannot perform necessary duties with the harness fastened. This applies to all part 135 operations.

A considerable number of aircraft now in use have shoulder harnesses installed. Other owners are encouraged to install shoulder harnesses since they are a proven safety item. Although it might be desirable to have all part 135 aircraft meet the standard, § 135.171 is realistic.

For consistency, "front seat" is changed to "flight crewmember station" in § 135.171(a) and "seat" is changed to "station" in § 135.171(b).

§ 135.173 *Airborne thunderstorm detection equipment requirements. (Proposed § 135.145.)*

While some commenters generally support it, most commenters oppose § 135.173(a). They cite the cost of procuring, installing, and maintaining the equipment, the lack of a corresponding increase in safety benefits, and the weight penalty. After considering the cost factors during the development of notice 77-17, the use of airborne thunderstorm detection equipment was proposed instead of radar. Airborne thunderstorm detection equipment can be installed at a more reasonable cost and it is somewhat lighter than airborne weather radar.

Revised part 135 authorizes the use of larger, more complex aircraft with a greater passenger-carrying capacity. Despite the objection to § 135.173, requiring thunderstorm detection equipment is justified for these expanded operations. The rule is limited to turbojet and 10 or more passenger multiengine aircraft. They are used in operations that generate millions of revenue passsenger miles each year. Thus, a significant segment of the traveling public is benefitted by this advance in safety of flight.

Some commenters misunderstand the applicability of § 135.173(b). This rule applies only to the aircraft described in § 135.173(a). Also, § 135.173(a) allows operators to conduct operations when the equipment is inoperative if current weather reports indicate thunderstorms or other hazardous weather is not expected during the flight. This helps reduce flight cancellations due to equipment problems. To clarify the applicability of § 135.173(b), the words "required by paragraph (a) of this section" are inserted after the word "equipment."

Numerous commenters object to requiring thunderstorm detection equipment for VFR night operations. This equipment is beneficial for night operations because considerable thunderstorm activity occurs at night and this equipment aids in locating hazardous unseen storm activity. This rule contributes to greater safety in operations because it enables the pilot to detect and locate severe adverse weather areas early. The equipment also enables the pilot to avoid these areas or take other action necessary for safety of flight.

Commenters object to applying this rule to helicopter operations. The helicopter is as susceptible to thunderstorm hazards as the airplane if the pilot fails to avoid severe weather areas. Therefore, the rule applies to helicopters.

§ 135.175 *Airborne weather radar equipment requirements. (New.)*

Some commenters on § 135.173 state that airborne weather radar is more appropriate equipment than airborne thunderstorm detection equipment because radar can detect more than thunderstorms. The comment has merit. Aircraft now required under §§ 121.357 and 135.2 to have airborne weather radar equipment installed and operating should continue to meet that requirement. New § 135.175 is added to retain the current requirement for large, transport category aircraft.

§ 135.177 *Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers. (Proposed § 135.147.)*

The few commenters on § 135.177 have only minor objections. One commenter opposes § 135.177(a)(4) which requires compliance with § 121.310 because that is an economic burden and not practical. Safety would be derogated by deleting the requirement to comply with § 121.310. The safety benefits outweigh the costs. Section 121.310 is not unduly burdensome for the operation of the higher passenger volume airplanes described. Aircraft now operating under part 135 have a seating capacity of 19 passengers or less. They do not have to meet § 121.310. The large aircraft that are now operating under part 121 of this chapter, and that will be operated under revised part 135 (30 seats or less and payload capacity of 7,500 pounds or less), already comply with § 121.310. New aircraft entering service under part 135 will comply with § 121.310 as part of their type certification.

Two commenters question the 19 or more passenger breakpoint. Current § 135.54 requires a flight attendant for an aircraft that has a passenger seating capacity of more than 19. The same distinction is appropriate for § 135.177 emergency equipment because a flight attendant is available to operate it.

§ 135.179 *Inoperable instruments and equipment for multiengine aircraft. (Proposed § 135.149.)*

Most commenters fully support § 135.179. This section relieves part 135 operators of a significant burden without compromising safety. The rule also reduces the potential for unnecessary delays to the traveling public. Part 135 does not now provide for the use of an approved minimum equipment list (MEL) to allow operations under certain conditions with inoperable equipment and instruments. Because of this, part 135 operators do not have the same operational flexibility as part 121 operators. This was a significant burden because they were required to make expedited repairs to provide scheduled service. In addition, passengers were delayed because of need to repair or replace inoperable instruments or equipment that was not necessary for the safe operation of a particular flight.

Section 135.179 relaxes that requirement and allows an operator to dispatch aircraft when certain pieces of equipment or instruments are inoperable. The MEL allows them to maintain schedule reliability and still maintains the necessary level of safety. The rule is a significant step forward that benefits both certificate holders and the traveling public.

The FAA Flight Standards Divisions of the region responsible for the type certification of a particular multiengine aircraft will administer the rule. This insures that each request for an MEL is handled properly and standardization is maintained for each aircraft. The responsible FAA District Office will give guidance to certificate holders about MEL requests and coordinate their approval.

Section 135.179(a)(1) is clarified to reflect the MEL may not include equipment and instruments that are essential for safe operation under all operating conditions and that are required, either specifically or otherwise, for the aircraft to meet the airworthi-

ness standards under which it was type certificated. For instruments and equipment to be included on an MEL, the operator will show that the aircraft can comply with the airworthiness standards with those instruments and equipment inoperable. Proposed paragraph (a)(3) is deleted as unnecessary.

§ 135.181 *Performance requirements: Aircraft operated over-the-top or in IFR conditions.* (*Proposed § 135.151.*)

Some commenters on § 135.181 indicate the rule is inappropriate and hard to understand. They recommend it be rewritten. The National Transportation Safety Board cites the field investigation phase of its "Air Taxi Study" (NTSB-AAS 72-9) and also states the rule may be misunderstood and misapplied. The Board recommends that § 135.181 (currently § 135.145) be either withdrawn or rewritten so that it cannot be misunderstood or misapplied.

The rule is complex and is difficult to meet because it may be misunderstood. The rule is clarified and simplified in the interest of safety. The change allows an en route IFR operation and an IFR approach at the destination airport if unforecast weather conditions do not allow a VFR operation. The 15-mile distance is changed to 15 minutes of flying time because the 15-mile criterion does not lend itself to the current state-of-the-art and methods for forecasting and reporting weather conditions.

One commenter states § 135.181 is undesirable for helicopter operations because it imposes performance requirements on helicopters which exceed type certification requirements. The increasing number of helicopters certificated for flight under IFR in part 135 operations justifies their inclusion in this rule. Helicopters must be treated the same as airplanes under these circumstances to insure safe operation under IFR.

A few commenters are confused by §§ 135.181(c) (1) and (2) for a descent under VFR from an over-the-top flight. Section 135.181(c)(1) allows a multiengine aircraft that cannot meet the single-engine en route climb performance standards to operate over-the-top if adequate weather conditions exist. Section 135.181(c)(2) allows a single-engine aircraft to operate over-the-top if broken clouds exist that enable the aircraft to make an emergency descent clear of clouds when required due to an inoperative engine.

SUBPART D—VFR/IFR OPERATING LIMITATIONS AND WEATHER REQUIREMENTS

§ 135.213 *Weather reports and forecasts.* (*Proposed § 135.171.*)

Many commenters contend that requiring current weather to be available at an airport where an IFR approach is conducted is unduly restrictive. They argue that this would preclude service to many airports that have approved instrument approach procedures. Several commenters recommend higher approach minimums for airports where weather reports are not available. Others believe the pilot's decision to make the approach should be based only on pilot reports and an area forecast. some commenters want to allow IFR operations at airports that are clustered within a certain radius of an airport having weather reporting facilities.

The National Transportation Safety Board in *Administrator* v. *Sandoval* (SE-2084) found current § 135.105 is not clear regarding weather requirements at destination airports. Section 135.213 is intended to rectify this problem. Weather observations used for IFR operations at an airport must be taken at that airport to insure an appropiate level of safety. Section 135.213 insures that IFR operations are not conducted unless reliable weather information for the specific airport is available to the pilot.

Several commenters suggest that § 135.213 allow the use of U.S. military weather reports and forecasts. The U.S. National Weather Service recognizes only military weather observations and not their forecasts. Thus, use of U.S. military weather sources is not allowed under § 135.213.

One commenter states an experienced commercial, instrument rated pilot is qualified to assume responsibilities for weather observations. The current rules provide for pilot observation for operations under VFR. However, for IFR operations, weather information from persons trained and knowledgeable in weather reporting and forecasting is essential to maintain safety.

A few commenters object to the time needed to investigate and approve each source of weather reporting information and to issue amendments to the operations specifications. They believe this procedure is impractical for on-demand operators. Because of the changing nature of weather conditions and the influence of different geographic locations, amendments to the operations specifications must be contingent upon an investigation. This investigation establishes that the weather conditions at an airport that has no weather reporting facility do not differ significantly from a nearby airport that has a weather reporting facility, and that this otherwise allows a safe operation.

One commenter asks what the term "IFR operations" means in § 135.213. The term "IFR operations" includes operations in VFR weather under an IFR flight plan as well as IFR operations in instrument meteorological conditions.

§ 135.215 *IFR: Operating limitations.* (*Proposed § 135.175.*)

Several commenters want § 135.215 changed to accommodate on-demand air taxi operations but they did not elaborate. Section 135.215 provides sufficient flexibility for each certificate holder, including an on-demand air taxi operator.

One commenter does not believe § 135.215(c) is meant to require approval for IFR operations and suggests deleting the portion of the last sentence after the semicolon. Section 135.215(c) allows a part 135 certificate holder to operate under IFR outside of controlled airspace when necessary to use an approved instrument approach or departure procedure or when necessary to climb into controlled airspace during an approved missed approach procedure, if those operations are approved.

One commenter believes the term "IFR" in § 135.215 limits operations to instrument meteorological conditions. That limitation would be difficult to administer. The term "Instrument Flight Rules (IFR)" is not limited to operations in instrument meteorological conditions.

§ 135.219 *IFR: Destination airport weather minimums.* (*Proposed § 135.179.*)

One commenter states that § 135.219 is unduly restrictive and should be deleted because weather reports and forecasts are not always accurate. While weather conditions can change from those covered in reports and forecasts, § 135.219 is necessary to establish the minimum weather conditions for the destination airport which must exist before IFR or over-the-top operations may be conducted. The only change to the current rule is to include over-the-top operations and to allow the use of weather reports or forecasts, or any combination of them, as an indication of the weather at the next airport of intended landing. This makes the rule more liberal. The current rule requires the use of both weather reports and forecasts without regard to any favorable combination.

§ 135.223 *IFR: Alternate airport requirements.* (*Proposed § 135.183.*)

One commenter recommends that § 135.223(a)(3) allow helicopter operators to have a 30-minute fuel reserve, instead of the 45-minute reserve now required beyond the alternate airport for all aircraft. The FAA considered making the fuel reserve for IFR operations similar to that for VFR operations in helicopters. Although helicopters are more maneuverable than

airplanes, the FAA concluded that the limited experience with helicopters in IFR operations under part 135 does not warrant reducing fuel requirements at this time.

To clarify the rule, the word "approach" is inserted after the word "circling" in § 135.223(b)(1), and words "instrument approach" are inserted after "circling" in § 135.223(b)(2).

§ 135.225 *IFR: Takeoff, approach and landing minimums. (Proposed § 135.185.)*

One commenter recommends using the phrase "the aircraft has passed the final approach fix," in § 135.225(c)(1) to clarify the rule and this is done.

Two commenters indicate the word "latest" could be interpreted differently as to weather reporting. They recommend using the word "current" in § 135.225. The word "latest" is used elsewhere in the Federal Aviation Regulations and is retained to achieve consistency of interpretation.

Two commenters believe that § 135.225 should be revised to eliminate repetitious use of the phrase "the U.S. National Weather Service, or a source approved by the U.S. National Weather Service, or a source approved by the Administrator." They also believe that current § 135.185(h)(4) should be deleted because it is unnecessary to repeat the same admonition that is given in § 135.227. These changes are made. Also, § 135.225(h)(2) is clarified to reflect that the ground installations (not the airborne equipment) are what "the landing minimums are predicated" upon. The requirements for operable airborne equipment are prescribed in subpart C.

§ 135.227 *Icing conditions: Operating limitations. (Proposed § 135.187.)*

Many commenters object to prohibiting IFR flights into known or forecast light or moderate icing conditions with present deicing or anti-icing equipment that is not certificated under part 23. They stated that the expense of meeting part 23 is unjustified and would impose an undue economic burden. One commenter suggests a "grandfather" clause for present aircraft. Other commenters believe IFR flight to VFR-on-top should be allowed under known or forecast light or moderate icing conditions. One commenter states the proposed rule is extremely restrictive for helicopters because there is no approved anti-icing or deicing equipment for main and tail rotor blades.

Based on these comments and after further deliberation, the FAA concludes the proposed rule is unworkable without major changes. Because of their magnitude, the proposed rule is withdrawn at this time and current § 135.85 is adopted as § 135.229. The reference to SFAR No. 23 in §§ 135.227 (b) and (c) is changed to the identical provision in section 34 of appendix A.

§ 135.229 *Airport requirements. (Proposed § 135.189.)*

Many commenters object to the words "properly equipped" and "facilities and public protection" in § 135.229(a). They contend that this language would place an air taxi operator in the position of qualifying an airport. Other commenters state that the rule would create an economic hardship to some operators and general aviation airports in meeting these requirements, if they mean security, fencing, crash, or rescue. Some commenters state there is not a clear definition of these required items and suggest they be deleted. These comments are accepted and the words are deleted.

Several commenters object to precluding the use of flare pots or lanterns, especially in remote areas where there is no electrical power available. They believe that approving the use of flare pots or lanterns should be left to the discretion of the local FAA district office or regional office. Other commenters recommend allowing the use of reflective material, or at least providing a mechanism for approval of its use in certain operations. A few commenters indicate that proposed paragraphs (b), (c), and (d) are not clear and recommended that current § 135.87 be reinstated.

These comments have merit. Current § 135.87 is retained and proposed paragraphs (b), (c), and (d) are withdrawn. The use of flare pots or lanterns for aircraft operations and reflective material for helicopter operations is allowed for marking the limits of the takeoff and landing areas. The use of flare pots or lanterns must be specifically approved.

One commenter believes the section should continue to apply to the carrying of passengers at night and § 135.229(b) provides for that.

SUBPART E—FLIGHT CREWMEMBER REQUIREMENTS

§ 135.243 *Pilot in command qualifications. (Proposed § 135.193.)*

Several commenters object to § 135.243(a). One commenter contends the airline transport pilot (ATP) certificate requirement is not justified because the part 135 6-month instrument proficiency check is equivalent to the ATP flight check and the ATP written examination now administered under part 121 serves no useful purpose in part 135 operations. Other commenters state that their objection to the ATP requirement would be reduced if the ATP written test were revised to relate it to part 135 operations. An ATP written exam more closely related to part 135 operations is appropriate and the FAA is developing one.

Each person who takes the part 135 instrument proficiency check need not be tested to the extent required for the original issuance of an ATP certificate. While the procedures and maneuvers required for the ATP certificate are included in the instrument proficiency check test, the check is not as extensive or comprehensive as an ATP certificate flight test. The purpose of the periodic instrument proficiency check is to determine that the pilot is competent to continue to be a pilot in command under IFR in part 135 operations.

A few commenters contend that § 135.243(a) is appropriate for large aircraft but not for air taxi operations conducted in small aircraft. A few commenters object because of the kinds of aircraft operations that are affected by § 135.243(a). This revision of part 135 makes the operation of certain large aircraft (those of more than 12,500 pounds maximum certificated takeoff weight having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less) subject to the rules of part 135. The ATP requirement is based on the complexity of aircraft currently in use and those to be approved for operations under revised part 135, as well as on their passenger-carrying capability. In establishing the need for this requirement, all known relevant factors were considered, including the classification of aircraft operations that are affected by § 135.243(a). Increased safety benefits will be provided by requiring pilots in command of the more complex operations under part 135 to hold an ATP certificate. A number of commenters state that they now require their pilots in command to possess an ATP certificate for part 135 operations. There is no indication that this voluntary action to increase the competence level of part 135 pilot personnel imposes an unnecessary burden on either these operators or their pilots.

Two commenters contend that an ATP certificate is not practical in Alaska and will not necessarily bring about a higher level of safety in the air taxi industry there. There is no reason to distinguish the part 135 pilot in command requirements in Alaska from the part 135 pilot in command requirements anywhere else.

One commenter contends that the requirements for an ATP have no resemblance to the kinds of flying conducted by commuter air carrier pilots and that the requirements for an ATP should be postponed until the ATP written test is more appropriate to part 135 operations. This commenter also recommends that if the require-

ment for an ATP certificate is adopted, it should be limited to commuter air carriers who hold authority to operate under IFR. The public interest is served by requiring pilots in command of the more complex part 135 operations to hold an ATP certificate. For this purpose, complex operations are operations conducted in turbojet airplanes, commuter air carrier operations conducted in mutiengine airplanes, and operations conducted in airplanes having a seating configuration, excluding any pilot seat, of 10 seats or more. Many of these operations are conducted under IFR into and out of the major terminal areas which have high volumes of air traffic. The requirement for ATP certificated pilots in command during these operations is essential to safety.

One commenter suggests that § 135.243(a) be extended to cover all multiengine air taxi operations. That action is unnecessary and not justified at this time. On-demand air taxi operations conducted in nonturbojet multiengine airplanes having a seating configuration, excluding any pilot seat, of nine seats or less are not affected.

Several commenters claim that the hours of flight experience required under § 135.243(b)(ii) are excessive. These requirements are unchanged from the present part 135 and no reduction is justified.

One commenter claims the requirement for pilots to hold an instrument rating under § 135.243(b)(iii) is an undue burden. Two other commenters contend that an instrument rating is not practical for many small singleengine airplanes with limited instrumentation and no radios that are operated in VFR conditions. Under current part 135, minimally equipped aircraft may be operated under VFR day conditions without benefit of either navigational or communications equipment. Sections 135.145 and 135.161 allow those operations to continue. However, a pilot's awareness of significant weather phenomena is enhanced if the pilot holds an instrument rating. Also, the present requirements of part 61 for a commercial pilot certificate (which is required before a pilot may fly for compensation or hire) include an instrument rating. This requirement is appropriate and necessary to achieve the desired level of safety in operations under part 135.

Throughout this subpart, the rules are revised to reflect that the certificate holder is held responsible for insuring the use of a qualified flight crewmember. For consistency, the words "No certificate holder may use any person, nor may any person serve as * * *" are used in each section.

§ 135.245 *Second in command qualifications. (Proposed § 135.197.)*

Several commenters on § 135.245 generally agree with the rule but object to requiring a class rating. Some of these commenters contend requiring a class rating and recent instrument flight experience places an unreasonable burden on the air taxi industry. There is ample justification for imposing those requirements because they insure the use of a more competent crewmember as a second in command. Under the rule, any person who acts as second in command of an aircraft is required to hold an appropriate category and class rating. The current rule does not require pilots acting as second in command to hold other than a commercial pilot certificate unless part 135 requires a second in command. Section 135.245 not only contributes to raising the level of safety in part 135, but also enhances crewmember qualifications.

One commenter contends that § 135.245 could be inflationary and redundant because § 135.293(b) requires a second in command to demonstrate proficiency in type (for multiengine airplanes). Section 135.245 is substantially the same as current § 135.127 except for the deletion of the words "when a second in command is required by this chapter." The requirement for a second in command to have an instrument rating is consistent with the current requirements of Part 61. The proficiency check requirement in § 135.293(b) is an annual competency check, in contrast to the recent instrument experience requirements of part 61 which must be met every 6 months.

One commenter states that the rule is more restrictive than part 121. Another commenter argues that the rule would discourage the use of a second in command when none is required, would result in a lower level of safety, and would cause the loss of valuable training experience for future second in command pilots. These requirements are now in part 135. They minimize crew errors because more qualified and proficient pilots are used as second in command. The more efficient use of qualified crewmembers does not significantly increase the burden on either the pilot or operator.

§ 135.247 *Pilot qualifications: Recent experience. (Proposed § 135.199.)*

One commenter contends that under § 135.247, a pilot may be current for night landings in a small multiengine airplane by virtue of currency in a large multiengine airplane even though the flight characteristics of the two airplanes are quite different. This comment ignores the initial and recurrent pilot testing requirements of § 135.293. They also must be met in a particular aircraft before a pilot may be used in operations under this part.

One commenter suggests that § 135.247 should apply only to passenger-carrying operations and should allow the carriage of cargo without the pilot having to make three takeoffs and landings within the preceeding 90 days. This comment has merit and § 135.247(a) is revised.

Two commenters object to requiring the second in command to meet the same recent experience requirements as the pilot in command. They contend that imposes an unnecessary burden on the operator. As stated in notice 77-17, § 135.247 is patterned on § 61.57, which applies to the pilot in command. Consequently, it was not intended to apply this provision to the second in command. The rule is revised to carry out that intent.

Night recency of experience requirements were inadvertently omitted from § 135.247(a). Since they are essential to safety and § 61.57(d) does not apply to operations requiring an airline transport pilot certificate, § 135.247(a) is revised to include a night recency of experience requirements.

SUBPART F—FLIGHT CREWMEMBER FLIGHT AND DUTY TIME LIMITATIONS

§ 135.261 *Flight and duty time limitations. (Current § 135.136.)*

The FAA has decided to defer adoption of new flight and duty time limitations governing part 135 operators. As a result, current § 135.136 is retained and redesignated as § 135.261.

In notice 78-3 (43 FR 8070; Feb. 27, 1978), the FAA proposed to amend the flight and duty time limitations governing parts 121 and 123 operators. Notice 78-3 contains many of the same concepts proposed earlier in notice 77-17 for subpart F of part 135. Notice 78-3 has generated extensive public comment. As a result of these comments, and those submitted in response to notice 77-17 on proposed subpart F, the FAA has received a considerable amount of information which will be useful in formulating final flight and duty time rules.

The differences which exist between part 121 and part 135 operations justify separate rulemaking actions to revise the current flight and duty time limitations. However, some of the concepts involved are fundamental and should be treated consistently. These include the definitions of flight time, duty time, and rest period; the treatment of deadhead transportation; and the method for determining applicable flight and duty time limitations when a flight crewmember serves with more than one flight crew.

Therefore, the public interest is best served by deferring adoption of the part 135 flight and duty time limitations until the comments on notice 78-3 are received and evaluated. In this

way, the agency would benefit by having additional information, views, and arguments to consider before adopting appropriate final rules governing part 135 operators.

SUBPART G—CREWMEMBER TESTING REQUIREMENTS

§ 135.293 *Initial and recurrent pilot testing requirements. (Proposed § 135.225.)*

Several commenters support § 135.293. One commenter objects to § 135.293(a) contending the testing of knowledge in each type of aircraft the pilot is authorized to fly will not improve safety. Operational experience shows that knowledge of each type of aircraft in which the pilot is authorized to perform a pilot crewmember function has a direct relationship to the pilot's overall competence and to safety.

One commenter suggests that the term "type" in §§ 135.293(a) (2) and (3) should be defined as it is in § 135.293(b) ("any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics"). Section 135.293(b) applies to flight competency checks. The definition of "type" in that paragraph relaxes the part 1 definition of "type" to contribute to the conservation of fuel. In contrast, §§ 135.293(a) (2) and (3) are written or oral test requirements and the part 1 definition of "type" is used. To clarify § 135.293(b), a definition of "type" for helicopters is added because the rule applies to both airplanes and helicopters.

One commenter on § 135.293(b) objects to leaving the extent of the competency check to the person conducting the check. This commenter contends that the rule would lead to a wide variance in the checking process, by leaving it to the whim of the local flight standards district office. The standard of performance in § 135.293(d) provides reasonable certainty of pilot competency, allows reasonable latitude in the conduct of the competency check and imposes no undue burden on either the pilot being tested or the operator. Another commenter states that the term "competency check" in § 135.293 (b) and (f) does not mean a "flight check." Section 135.293(b) clearly requires that this competency check be given in an aircraft. Section 135.293(f) allows portions of a required competency check to be given in an aircraft simulator or other appropriate training device if specifically approved.

One commenter suggests that helicopter competency checks be treated the same as competency checks in single-engine airplanes other than turbojects. The commenter argues that all light piston-engine helicopters should be in one "class" and all light turbine-engine helicopters should be in another "class," and that a competency check in "that type of aircraft, if helicopter" should not be required. The handling and flight characteristics of light helicopters are significantly different. The equipment available for them also is considerably different. A separate flight check is necessary to judge pilot competence properly. As additional helicopters become available and standardization of various models is accomplished, competency check requirements will be established similar to those for airplanes.

§ 135.295 *Initial and recurrent flight attendant crewmember testing requirements. (Proposed § 135.227.)*

Notice 77-17 proposed to redesignate current § 135.139 without change. However, that rule does not require flight attendant crewmembers to be knowledgeable and competent concerning the location and operation of other items of emergency equipment, such as a megaphone, crash ax, firstaid kit, and so forth. The equipment is on board an aircraft to enable flight attendants to respond to an emergency situation and they must be competent to use it. To provide an appropriate level of safety in revised part 135, § 135.295(e) is amended to reflect that requirement.

§ 135.297 *Pilot in command: Instrument proficiency check requirements. (Proposed § 135.229.)*

Several commenters object to § 135.297(b). They contend that there was no reason to require a demonstration of each approach to be used. Another commenter contends that a pilot who demonstrates the basic instrument approaches during an instrument proficiency check should then be allowed to use derivative approaches. Another commenter recommends that a specific combination of instrument approaches be demonstrated instead of requiring the demonstration of "any type" of instrument approach expected to be used.

These comments have merit. A pilot should not have to demonstrate all possible types of instrument approach procedures before that pilot may use them under part 135. Section 135.297(b) is revised to reflect that. A pilot who successfully demonstrates separate instrument approach procedures using ILS, VOR, and NDB facilities is considered qualified to conduct all of the published standard instrument approach procedures prescribed under part 97. A letter of competency is issued to reflect that under revised § 135.297(h). The instrument approach procedures demonstrated must include at least one straight-in approach, one circling approach in conjunction with a VOR or NDB, and one missed approach procedure. Each instrument approach procedure demonstrated must be conducted to published minimum for the procedure.

Pilots who demonstrate competency in at least the combination of instrument approach procedures described are equally competent to conduct other types of approach procedures. This does not apply, however, to the use of microwave landing systems because of the difference in glide slope gradient, instrumentation used and other differences which require a separate showing of competency.

One commenter on § 135.297(c) suggests that the second sentence be deleted and a reference to § 135.293(a)(2) be included instead. There is some similarity between the test areas listed in § 135.293(a)(2) and the test subject matter of § 135.297(c). However, the subjects of these tests are not identical and the two oral or written tests are not given for the same purpose. The test under § 135.293(a) covers subjects which are generally applicable, such as ground training requirements. The test under § 135.297(c) is an equipment test related to operational procedures in which the pilot must demonstrate competency before being used under IFR.

One commenter objects to § 135.297(c)(1) contending that the "procedures and maneuvers set forth for an ATPC (in FAR 61, appendix A)" is lengthy, many are not appropriate for 6-month instrument checks, and many could not be safely accomplished under IFR. Section 135.297(f) allows the use of a simulator or other appropriate training device for portions of the required flight check. Section 135.297(c)(1) is clarified to insure that each pilot in command is adequately tested on the procedures and maneuvers for the particular pilot certificate held and the privileges exercised under § 135.243. Also, the requirements of the instrument proficiency check for pilots in command required to hold an airline transport pilot certificate under § 135.243(a) and the requirements for pilots in command required to hold a commercial pilot certificate with an instrument rating under § 135.243(c) are stated in separate paragraphs. Another commenter suggests that the last sentence of § 135.297(c)(1) be deleted. The sentence is deleted because an instrument check is not required when operations are limited to VFR only.

Section 135.297(f) could be interpreted to allow a pilot in command to take the initial instrument proficiency check in a single-engine aircraft and then be authorized to pilot a multiengine aircraft without a check in it until the next 6-month check is due.

This paragraph is clarified to reflect that a pilot who is assigned to both single and multiengine aircraft must take the initial instrument proficiency check required by § 135.297(a) in a multiengine aircraft and succeeding checks alternately in single-engine and multiengine aircraft.

§ 135.299 *Pilot in command: line checks: routes and airports. (Proposed § 135.231.)*

Several commenters on § 135.299 argue that recurrent line checks in a part 135 operation are unnecessary and burdensome. Current § 135.122 covers specific areas not adequately covered by the testing requirements in current § 135.138. Section 135.299 insures that each pilot used in part 135 operations accomplishes line checks and that each certificate holder establishes procedures in the manual outlining company policy concerning the manner in which pilots are expected to keep current on routes and airports. The line check requirement is necessary to test the pilot's knowledge of routes and airports and to determine the manner in which the pilot applies company procedures and conducts flight operations.

Several commenters contend that line checks are not appropriate for "on-demand" operators because they do not have a "line operation." Another commenter suggests that all small "on-demand" air taxi operators in aircraft seating less than 10 passengers be exempt from § 135.299. Another commenter suggests that § 135.299 be limited to commuter air carriers as defined in part 298 of the Civil Aeronautics Board's Economic Regulations (14 CFR Part 298). The broad scope of checks and tests which must be satisfactorily accomplished during a specific period of time by pilots operating under part 135 is adopted in revised part 135 because of the many variations in air taxi operations, the qualifications of pilots, and the aircraft used. No single test or check requirement is more or less essential than any other to establish the appropriate level of safety. For these reasons, these checks and tests are considered necessary whether the operator is a single pilot owner-operator, helicopter operator, on-demand air taxi operator or commuter air carrier. They are for the express purpose of insuring that the pilots in command meet the applicable knowledge and skill requirements for use in operations under part 135.

One commenter asks how "takeoffs and landings (plural) over at least one route segment" in § 135.299(a)(2) could be accomplished and suggests that the word "segment" be deleted from § 135.299(a)(3). A line check may be as brief or as extensive as the person giving the check deems necessary to determine the pilot's competence. Consequently, more than one takeoff and landing may be needed.

Another commenter objects to § 135.299(a)(3) contending that the proposed requirement for takeoffs and landings at two or more representative airports would be costly for operators in areas of the country where no short routes exist. The commenter suggests that a requirement for takeoffs and landings at "one or more representative airports" would be equally appropriate for VFR line checks. These comments have merit and § 135.299 is revised by combining proposed paragraphs (a) and (b) and requiring takeoffs and landings at one or more representative airports for both VFR and IFR operations. However, for IFR operations, the requirement for at least one flight to be conducted over a civil airway, an approved off-airway route, or any portion of them is retained in § 135.299(a)(3).

One commenter objects to § 135.299(d) and suggests that it be deleted for the reason stated in the preamble to amendment 135-26 (36 FR 2481, Feb. 5, 1971). A number of other commenters claim § 135.299(d) is redundant because its substance is in § 91.5 and that it would require the pilot to research information that is not readily available. Amendment 135-26 was based upon conditions which existed in 1971. Conditions are sufficiently different today to justify § 135.299(c). The air taxi industry has grown, and, in many cases, has developed into specialized operations such as those of commuter air carrier. Not all air taxi operators would expect to travel to the same destinations. They also may not wish to acquire all available information concerning a flight in the same manner. Section 91.5 is sufficient for routine general aviation operations, but that section is not sufficient for the scope of operations presently conducted under part 135. Also, § 91.5 is not sufficient for the level of safety in revised part 135. Section 135.299(c) is intended to require the certificate holder to establish in the manual required by § 135.21 a procedure appropriate to that certificate holder's kind of operations. That procedure should insure that the certificate holder's pilots who have not flown over a specific route and into a specific airport within the preceding 90 days will become familiar with all available information required for the safe conduct of that particular flight. The list of specific items of information in proposed paragraph (e) is withdrawn because, in some cases, information on each item may not be available.

§ 135.301 *Crewmember: Tests and checks, grace provisions, training to accepted standards. (Proposed § 135.233.)*

Some of the comments on § 135.301 compliment the FAA on the provision which would allow additional training to be given to the pilot receiving the check.

One commenter requests an explanation of the phrase in § 135.301(a) "the calendar month before or after the calendar month in which it is required." If a test or check is required to be taken in January 1979, and it is satisfactorily completed in December 1978 or February 1979, then the test or check would be considered to have been completed in the month (Jaunary 1979) in which it was required. Of course, the date of the next required test or check would be based on the January 1979 date (not on December 1978 or February 1979).

Two commenters state that the prohibition in the last sentence of § 135.301(b) concerning the use of a person unable to demonstrate satisfactory performance on a required check is unreasonably burdensome. Another commenter suggests that the rule prohibit the use of a person who has failed a check in operations under part 135 in which the check is a requirement. If a pilot being checked under this part fails any of the required maneuvers, the person giving the check may elect to give the pilot additional training during that check. Thus, it is unlikely that a person who has received the required training under part 135 would be incapable of ultimately passing a required check under § 135.301(b). If a person is unable to pass the required check, then this is all the more reason why that person should not serve as a crewmember in operations under revised part 135 until that person has satisfactorily completed the check. The rule provides sufficient latitude in its present form.

SUBPART H—TRAINING

§ 135.321 *Applicability and terms used. (Proposed § 135.237.)*

One commenter objects to the need for establishing and maintaining an "approved training program" and suggests that the word "approved" in § 135.321(a) be changed to "acceptable." Under § 135.341, each certificate holder must have an approved training program which includes, in as broad terms as possible, those items which are essential to every training program. The rules make clear the basic requirements for initial and recurrent training for each crewmember. Revision of an approved training program may be made at the initiative of either the certificate holder or the Administrator. The rules for revision on the Administrator's initiative are comparable to those now in part 121. The basis for the requirement for an ap-

proved training program is that operations under part 135 should not be exposed to the hazards that might be created by the use of a training program over which the FAA has only limited control. Thus, there is ample justification for requiring an approved training program to enhance safety in the revision of part 135.

One commenter on the entire subpart contends that since aircraft groups I and II defined in § 135.321(b)(1) and (2) are not used elsewhere in the subpart, their application is not clear. This comment has merit and those words are deleted.

Another commenter suggests that specific training hours be specified to preclude varying interpretations of the rules for similar operations. Another commenter lauded the FAA for not establishing specific training hours. The FAA is not persuaded that specific training hours would be beneficial to either the air taxi industry or to the FAA.

One commenter suggests that § 135.321(c) be amended to provide additional categories of training such as "maneuver" or "on line" training. The present categories of training are comparable to those now in part 121 and they are adequate.

§ 135.323 *Training program: general. (Proposed § 135.239.)*

Several commenters on § 135.323(a)(1) suggest that the word "approved" be changed to "acceptable." As discussed under § 135.321, there is ample justification for requiring the program to be subject to FAA approval.

Two commenters claim that "small on-demand air taxi certificate holders" should be exempt from subpart H. Under § 135.341(a), certificate holders who are the only pilots in their operation are exempt from the requirement to establish and maintain an approved pilot training program. Also, the Administrator may authorize a deviation from this section if, because of the limited size and scope of the operation, safety allows a deviation. The deviation authority contained in paragraph (a) will be limited to certain aspects of the training program. It allows the Administrator to place the proper emphasis on each element of the training program needed for each certificate holder's operation. It also allows the Administrator to refine, in light of current technology, the kinds of training that must be included in a particular training program.

Another commenter suggests that credit be given in the approved training program for factory-approved ground schools or their equivalent. The rule allows the inclusion of this kind of valid training in the program presented to the FAA. It will be evaluated by the FAA and, if satisfactory will be approved.

Another commenter expresses concern that requiring the use of "properly qualified ground instructors" in § 135.323(a)(2) may preclude the use of other persons available to the operator. The rule does not limit instructor personnel to certificated instructors. Other properly qualified persons identified by the certificate holder and approved by the FAA may be used in the approved training program.

One commenter suggests that § 135.323(a)(4) be revised by adding the words "if applicable" where referring to the use of simulators. The rule clearly allows the use of any specific simulator available if approved by the Administrator. Another commenter opposes this paragraph but gives no rationale.

Section 135.323(c) is revised to provide that a certifying signature is not required when entries are made in a computerized recordkeeping system where a signature is not practical.

§ 135.325 *Training program and revision: initial and final approval. (Proposed § 135.241.)*

One commenter suggests limiting the applicability of § 135.325 to "Commuter Air Carriers" as defined in part 298 of the Civil Aeronautics Board's Economic Regulations (14 CFR Part 298). This commenter also suggests exempting helicopter operations from this section because of the rapidly changing training concepts in helicopter operations. The approval process under § 135.241(a) is keyed to § 135.241(c). The certificate holder must show that the training conducted after the initial approval ensures that persons who complete the training program are adequately trained to perform their assigned duties. This is the key to the concept of training to proficiency in either airplanes or helicopters. The certificate holder has an opportunity to present for approval a training program which is as effective as the certificate holder can make it using current technology. The FAA explores each possibility to translate new technology into effective regulations and to facilitate the safest and most effective training programs possible.

Several commenters complain about the lack of standardized criteria for use by FAA Flight Standards District Offices in approving training programs. The FAA appreciates this concern and intends to ensure that standardized criteria are used for the initial and final approval of training programs and of any revisions presented for approval under this section.

Some commenters claim that this subpart would cause a paperwork burden. The enhanced training requirements will increase paperwork because of expanded curriculum standards and additional recordkeeping. After the curriculum is approved, the paperwork burden is limited to amendments to training requirements and continuing recordkeeping. Although the initial paperwork may appear significant, operational experience in administering the part 121 training rules shows that the anticipated burden is not that heavy. After the program is approved, the improved proficiency of crewmembers yields a more efficient, sensitive and smooth-running operation. In short, once an operator has a training program, its benefits outweigh the modest burden of obtaining it.

§ 135.327 *Training program: Curriculum. (Proposed § 135.243.)*

Several commenters object to § 135.327. They contend that it is a burden on smaller operators and that a written curriculum for each type of aircraft is unnecessary and unwieldly. One commenter suggests that written curriculums should be required only for turbojets and large aircraft.

The enormous technological advances and abundance of supportive information now available to the industry can be used without causing an undue burden on any operator. Acceptable written curriculums can be developed for each type of aircraft because of the wealth of aircraft information now available. The majority of affected operators now have written curriculums. Probably, many can be modified to apply to other aircraft. Also, the training curriculum may be applied to more than one aircraft and one need not be written for each aircraft the operator uses. Of course, as complexity increases in each operation, a more complex curriculum becomes necessary. The specific requirements of § 135.327 are the minimum essential items the FAA needs to approve the curriculum.

§ 135.331 *Crewmember emergency training. (Proposed § 135.247.)*

One commenter on § 135.331 suggests that it provide for exclusions based upon the certificate holder's operations and equipment, for example, operations which do not include pressurized aircraft or flotation devices. The substance of this comment is accommodated because § 135.331(a) limits emergency training to that which is applicable to each crewmember and certificate holder. Thus, if a pressurized aircraft is not operated, training for rapid decompression is not required. Similarly, if flotation devices are not required in the operation, training in the use of related equipment is not required. To emphasize this, the words "if applicable" are

added at the end of § 135.331(c) (4), (6) and (7).

One commenter on § 135.331(b)(4) contends that this paragraph will be difficult to comply with but offered no explanation. Because of this comment, the review in § 135.331(b)(4) is limited to the certificate holder's previous aircraft accidents and incidents. This information should be readily accessible. Another commenter suggests that the words "and discussion" be inserted after the word "review" to insure that the items are discussed during crewmember emergency training. Discussion should be a normal part of a review. Crewmembers may request discussion at any time and the change is not necessary.

Certain commenters contend that this rule should not apply to on-demand operators of small aircraft. This rule must apply to all certificate holders to insure the adequacy of the training in these procedures and to afford the appropriate protection to passengers carried under part 135.

§ 135.333 *Training requirements: Handling and carriage of hazardous materials.* (*Proposed § 135.249.*)

Because the requirements of paragraph (e) are covered in § 135.323(b), paragraph (e) is withdrawn.

§ 135.335 *Approval of aircraft simulators and other training devices.* (*Proposed § 135.251.*)

One commenter on § 135.335(b) suggests that the term "training device" could be construed to include "blackboards, visual aids" and similar items. This would necessitate the approval of these items as part of the training program. The commenter also suggests that "training device" be defined. Training devices are approved as elements of the program. A definition would be unduly restrictive. New § 135.335(c) is added to outline the elements the FAA considers in approving a training program.

§ 135.337 *Training program: Check airmen and instructor qualifications.* (*Proposed § 135.253.*)

One commenter claims § 135.337 (a)(2) is unworkable because it does not specify who or what agency provides the initial training for required check airmen and instructors. The initial designation of check airmen or instructors is based on their documented qualifications and demonstrated ability. Then, considerable emphasis is placed on periodic evaluation of their performance by the FAA District Office. In addition, these personnel must participate in the proficiency check program of the operator. This must be appropriate to the person's airman certificate, ratings and duty assignments which are related to the approved check airman and instructor function involved. Instructors and check airmen (who are approved by the FAA to conduct flight crewmember qualification, proficiency and en route checks) approvals are terminated when their performance is no longer satisfactory. This maintains the integrity of the check airman and instructor program.

One commenter on § 135.337(a)(3) contends that the term "appropriate proficiency and competency checks" should be changed to read "appropriate instrument and flight checks." The term "appropriate proficiency and competency checks" is more consistent with current industry standards than the term suggested by the commenter. Also, it is consistent with the language of §§ 135.293 and 135.297.

Several commenters on § 135.337 contend that § 135.337(a)(5) exceeds the requirements of current § 121.411(a)(6) which allows a check airman to hold a class III medical certificate. The commenters assert that this precludes the use of experienced senior pilots who can no longer meet class I or II medical standards. They claim that the traveling public's safety is not dependent on the class of medical certificate held by a check airman.

The objections presented do not make a persuasive case for amending or withdrawing this rule. The commenters, in comparing proposed § 135.337 with § 121.411, may have failed to consider certain requirements of part 135 which were not proposed to be changed. Current § 135.135 requires each certificate holder who desires FAA approval of a check pilot to submit a request in writing to the appropriate FAA District Office. The Administrator may issue a letter of authority to a person as a check pilot if that person meets the requirements of §§ 61.3, 61.31, 61.139, 61.149 and 61.151 and meets and accomplishes certain other requirements essential to that person's approval. Thus, current part 135 requires a check airman to hold at least a commercial pilot certificate with appropriate category and class ratings, an instrument rating, an appropriate type rating (if required) and at least a class II medical certificate. Under § 135.337, the check airman must hold the certificate and ratings required of a pilot in command in an operation conducted under § 135.243. Consequently, the check airman must hold the class I or class II medical certificate appropriate to the certificate privileges under § 135.243.

Safety would not be compromised if pilots who are used as check airmen in an aircraft simulator only hold a class III medical certificate. Of course, the pilot must meet the other requirements of this chapter. New § 135.337(a)(7) is added to allow that. This provides greater operational flexibility for certificate holders and airmen. Section 135.337(b)(2) is clarified by inserting the words "the following as evidenced by the approval of" in place of the word "for."

§ 135.339 *Check airmen and flight instructors: initial and transition training.* (*Proposed § 135.255.*)

One commenter contends § 135.339 (a) should be deleted because § 135.337 does not specify who is authorized to give the initial training for the check airmen and instructors. This comment is discussed at length under § 135.337.

Commenters on § 135.339(c)(3) criticize the requirement because they interpret it to be a mandate to accomplish this training in flight. The language of § 135.339(c) is clear that demonstration of unsafe practices in flight is not required. The paragraph closely follows the language of current § 121.413. This paragraph is intended to insure that the training program includes a discussion or an appropriate demonstration of the need for timely action in response to an in-flight situation having critical accident potential. Sufficient safeguards should be employed when simulating emergency procedures.

§ 135.341 *Pilot and flight attendant crewmember training programs.* (*Proposed § 135.257.*)

Commenters on § 135.341 suggest that all certificate holders be required to have a training program. One commenter claims that a training program patterned on current part 121 is unduly burdensome. Another commenter suggests that the word "approved" in § 135.341(a) be changed to "acceptable".

One of the purposes of this revision of part 135 is to update and improve the training requirements. Changes include provisions for approving and revising training programs, for extending the use of aircraft simulators, and for allowing improvements in present technology to be easily applied in training programs. These changes increase the quality of crewmember training without unduly burdening any operator. The suggestion to change the word "approved" to "acceptable" is discussed at length under § 135.321(a).

One commenter contends that compliance with subpart H will unnecessarily increase the cost of conducting air taxi operations in small aircraft with little increase in the level of safety. This comment overlooks the deviation authority in § 135.341(a). That section allows waivers of certain training requirements based on the size and scope of operations when the operator shows that literal compliance with the rules is not necessary in the interest of safety. This provides adequate flexibility to significantly

reduce the cost of training for operators of small or light aircraft.

Another commenter suggests that every air taxi operator, regardless of size, be required to have an air taxi training program. This commenter contends that if an operator is not otherwise required to have an approved training program, then it should be required to contract with a company with an approved program to train that operator's personnel. The current rule does not require a training program if the certificate holder is the only pilot. No change in the current rule is justified. However, § 135.341(a) is editorially revised to clarify that language. Also the phrase "every 12 calender months" is deleted from § 135.341(b)(5) because it is not appropriate there.

§ 135.343 *Crewmember initial and recurrent training requirements. (Proposed § 135.259.)*

The concluding sentence of current § 135.137, was inadvertently omitted from this rule as proposed in Notice 77-17. To make § 135.257 and § 135.343 consistent, the sentence is restored.

§ 135.345 *Pilots: Initial, transition, and upgrade ground training. (Proposed § 135.261.)*

An Aircraft Flight Manual is not required in the certification of all aircraft. For example, one is not required for an airplane of 6,000 pounds or less maximum certificated takeoff weight type certificated under part 23. Sections 23.1581(a)(2) and 27.1581(a)(2) requires that if the required information is not furnished in an Aircraft Flight Manual, then it must be furnished in any combination of approved manual material, markings, and placards. To reflect this fact, the words, "or equivalent" are added after the words "Aircraft Flight Manual" in § 135.345(a)(2)(xi).

§ 135.347 *Pilots: Initial, transition, upgrade, and differences flight training. (Proposed § 135.263.)*

One commenter on § 135.347 contends that it prohibits a certificate holder, whose approved training program authorizes the use of an aircraft simulator, from reverting to an aircraft when the simulator is out of service. A reasonable and prudent element of an approved training program would authorize the use of an aircraft when the simulator is out of service.

One commenter suggests that the words "airplane simulator" in § 135.347(b) should be changed to the words "aircraft simulator." The FAA agrees and that is done. The phrase "or a static aircraft" in § 135.347(b) no longer serves any useful purpose and it is deleted.

§ 135.349 *Flight attendants: Initial and transition ground training. (Proposed § 135.265.)*

Section 135.349(b) is deleted because it is covered in § 135.295.

§ 135.351 *Recurrent training. (Proposed § 135.267.)*

Section 135.351(b)(3) is deleted because it is covered in § 135.295.

SUBPART I—AIRPLANE PERFORMANCE OPERATING LIMITATIONS

§ 135.361 *Applicability. (Proposed § 135.271.)*

One commenter agrees with this subpart, but goes on to state an understanding that the FAA does not intend to apply additional airplane performance standards beyond those now in the Federal Aviation Regulations. This subpart is needed to insure that these airplanes are operated within limits that meet the level of safety intended for part 135 flight operations. Their adoption does not imply that additional airplane performance standards may not be necessary in the future. These rules for airplane performance are adequate for the present generation of airplanes. However, future amendments to the current regulations may be necessary because of unforeseen circumstances.

One commenter states, without elaborating, that, "This subpart should not apply to on-demand air taxis due to the fact that there is insufficient data readily available as published by the Federal Government." Subpart I applies to the type of aircraft being operated and not the type of operation. In the interest of safety, each aircraft must meet these operating limitations, whether used in air taxi or commuter service. The requirements adopted in subpart I are in the current rules and they have not caused operators any problems.

Several commenters suggest that the FAA should make available the airport data necessary to comply with this subpart. The FAA cannot assume responsibility for the collection and publication of the information for all airports that is necessary to show compliance with this subpart. The certificate holder is responsible for obtaining the required data for each airport into which its operations are conducted. The basic data on specific airports should be requested from the airport authority which normally has that available.

Several commenters state that the "60-percent rule" should apply to all operators and an exception should allow operators with auxiliary stopping devices (such as drag chutes and propeller or thrust reversers) to use a 70-percent factor. The applicability of this subpart is consistent with current regulations governing airplane performance operating limitations. Allowing the use of a 70-percent factor for additional auxiliary stopping devices is not acceptable under this subpart. No valid data is available for these devices and extensive testing would be necessary before that data would be available. Performance data now available in the Airplane Flight Manual has proven adequate to comply with this subpart.

Four commenters suggest that subpart I apply to turbojet aircraft and large aircraft. This subpart applies to all large aircraft, including turbojet, operated under revised part 135. Section 135.155 in notice 77-17, which contained small airplane performance operating limitations, has been included in subpart I as §§ 135.397 and 135.399. Small airplane performance operating limitations do not currently apply to nontransport category turbojet airplanes and this rule was not proposed for change. However, notice 77-25 (42 FR 56702; Oct. 27, 1977) invited recommendations concerning the development of a new airworthiness certification standard for the airplanes intended for use by commuter air carriers in part 135 operations. These comments are being evaluated separately.

When published, notice 77-17 did not contain amendment 121-132 (41 FR 55475; Dec. 20, 1976) governing airplane performance. This amendment moved the definition of "effective length of runway" for takeoff from § 121.171(b) to § 121.199(b)(5), because this term is not used elsewhere in part 121. Having the definition in § 121.171 caused confusion in the past. Sections 135.361(b) and 135.389(b) are amended in a manner similar to amendment 121-132.

§ 135.363 *General. (Proposed § 135.273.)*

Section 135.363 is clarified by defining a large nontransport category airplane for the purposes of subpart I as one that was type certificated before July 1, 1942. A large airplane type certificated after that date must meet performance operating limitations for a transport category airplane to operate under part 135.

§ 135.379 *Large transport category airplanes: Turbine engine powered; takeoff limitations. (Proposed § 135.289.)*

Section 135.379(c) is clarified by inserting the words "as defined in § 25.109 of this chapter" after the word "distance." This is done because the definition of "accelerate-stop distance" has been removed from part 1 and now is defined in part 25.

§ 135.397 *Small transport category airplane performance operating limitations. (Proposed § 135.155.)*

Proposed § 135.155 (a) and (b) are moved from subpart C and redesignated as § 135.397 because they contain small transport category airplane performance operating limitations.

§ 135.399 *Small nontransport category airplane performance operating limitations. (Proposed § 135.155.)*

Proposed § 135.155(c) is moved from subpart C and redesignated as § 135.399 because it contains small nontransport category airplane performance operating limitations.

An Airplane Flight Manual is not required for airplanes of 6,000 pounds or less maximum certificated takeoff weight which are type certificated under part 23 of this chapter. Section 23.1581(a)(2) requires that if the information is not furnished in an Airplane Flight Manual, then it must be furnished in any combination of approved manual material, markings and placards. Thus, the words, "or equivalent" are added after "Airplane Flight Manual" in § 135.399. The applicability of this rule to small airplanes is unchanged from current § 135.148.

Some commenters on proposed § 135.155 believe it should apply to all multiengine turbine engine-powered airplanes. Others state that the proposal granted an unfair advantage to operators of those airplanes not affected by it. Where performance information is available in an Airplane Flight Manual, safety considerations require that the information be used with the other requirements in this subpart. The performance information required for the compliance with this section may not always be available for nontransport category airplanes.

SUBPART J—MAINTENANCE, PREVENTIVE MAINTENANCE, AND ALTERATIONS

§ 135.411 *Applicability. (Proposed § 135.333.)*

Several commenters contend that § 135.411(a)(1) imposes manual and recordkeeping requirements in addition to those now required in other parts of the Federal Aviation Regulations. Operators who must comply with § 135.411(a)(1) now must meet the maintenance and recordkeeping requirements of parts 91 and 43. Section 135.411(a)(1) does not add maintenance recordkeeping or manual requirements beyond those now required under parts 43, 91 and 135 for an operator using an aircraft type certificated, excluding any pilot seat, for nine or less passenger seats.

Two commenters state that a maintenance rule applied to one type of part 135 operator should be imposed on all of them. The different types and classes of aircraft now used in part 135 operations were considered in developing revised part 135. Subpart J provides an acceptable maintenance system considering those different types and classes of aircraft.

One commenter recommends that the passenger seating criteria for helicopters in § 135.411(a)(1) be increased from 9 to 19 and in § 135.411(a)(2) increased from 10 to 20. All types of aircraft, including helicopters, were considered during the development of subpart J. A helicopter is no less complex than an airplane. A helicopter is used to carry passengers in similar operating environments to an airplane. This includes approval of helicopters for use in IFR conditions. If the same maintenance standards were not imposed on helicopters and airplanes, the public interest would not be served. Passengers must have the same assurance of safety whether an air taxi operator conducts operations in airplanes or helicopters.

Some commenters suggest that § 135.411(a)(1) should apply to piston-powered aircraft and § 135.411(a)(2) should apply to turbine-powered aircraft. Basing the maintenance requirements on the type of powerplant installed is not acceptable and may compromise safety. For example, if § 135.411(a)(1) were applied only to piston-powered aircraft, an aircraft that carries 30 passengers would have lower maintenance requirements than a small turbine-powered aircraft that carries six passengers. Thus, the rule for maintenance and inspection of part 135 aircraft applies on the basis of the passenger-carrying capability rather than the type of powerplant installed.

Some commenters state that § 135.411 will burden operators in remote areas due to the shortage of personnel available to perform the required inspections. Some operators using aircraft that are type certificated for 10 or more seats, excluding any pilot seat, may experience difficulty in accomplishing required inspections. However, § 135.411(a)(2) should apply wherever the aircraft are operated to achieve the level of safety required for revised part 135. Section 135.411(a)(1), which applies to aircraft type certificated for nine or less passenger seats, excluding any pilot seat, will not burden air taxi operators in remote areas. The procedures for the performance of maintenance remains basically the same as the current rules, except for additional maintenance requirements in § 135.421 for engine, propeller, rotor and emergency equipment.

A number of commenters state that the lack of the maintenance program required by §§ 135.11 and 135.411(a)(2) has not caused many fatal accidents. A study of air taxi accidents made by the National Transportation Safety Board (NTSB-AAS 72-9) indicates that the lack of properly managed maintenance programs is a contributing factor in air taxi accidents. The Board concludes that there is a lack of clearly identifiable safety practices in the maintenance functions of commuter air carriers. The Board recommends part 135 require training for aircraft maintenance personnel and establish standard programs for using manufacturer maintenance requirements for aircraft components, powerplants and propellers. The Board's recommendation was considered in revising part 135.

Two commenters question whether a continuous maintenance program is justified in view of the cost. Subpart J is justified by the diversity of aircraft that certificate holders operate. This subpart provides the air taxi passenger with a level of airworthiness that is equivalent to a part 121 air carrier.

Some commenters want to know whether "certificated pertained to the configured capacity of an aircraft or the passenger capacity as listed on the aircraft type data sheet when an aircraft is type certificated." Under subpart J, "certificated" means the number of passengers listed on the type data sheet or as modified by a Supplemental Type Certificate (STC). To clarify that, the word "type" is added before the word "certificated" in §§ 135.411(a) (1) and (2).

§ 135.413 *Responsibility for airworthiness. (Proposed § 135.335.)*

Several commenters on § 135.413(a) state that there is no need to refer to having defects repaired between required maintenance under part 43 because part 135 requires a maintenance program. Although part 135 includes maintenance programs for air taxi aircraft, the performance standards for maintenance, preventive maintenance, rebuilding and alteration are prescribed in part 43. Thus, the reference is appropriate.

Section 135.413(a) applies to all part 135 certificate holders. This rule places the primary responsibility for airworthiness of its aircraft on the certificate holder. Each certificate holder must insure that all required maintenance is performed regardless of the program § 135.411 requires. The operator of an aircraft that is type certificated for nine seats or less, excluding any pilot seat, may have a properly certificated person maintain its aircraft. The person who performs this work for a certificate holder (who must comply with § 135.411(a)(1) must perform that work as the applicable Federal Aviation Regulations require. Section 135.413(b) places on the operators of aircraft type certificated for 10

seats or more, excluding any pilot seat, the responsibility to perform the maintenance on their aircraft as required by the Federal Aviation Regulations. Section 135.413(b)(2) allows these operators to have their maintenance performed by another person but it does not relieve the certificate holder of the responsibility for that work.

Several commenters state that § 135.413(b)(2) is unrealistic because it makes air taxi operators who maintain their aircraft under § 135.411(a)(2) responsible for the maintenance someone else performs on its aircraft. They also state that an FAA-certificated repair station is found by the FAA to be qualified and it would be a duplication to have the operator assume this responsibility. An FAA-certificated repair station is qualified under the requirements of part 145. However, the operator must insure that each person who performs its maintenance is competent, has adequate facilities and has an organization to perform maintenance in accordance with the certificate holder's manual. The operator can consider the fact that the FAA has found that a repair station is technically qualified to perform its maintenance. The operator still is responsible for insuring that a repair station can, and in fact does, comply with the procedures outlined in the operator's manual.

Another commenter objects to the certificate holder being responsible for work an FAA-certificated repair station performs because this requires a periodic visit to each agency with whom the operator contracts for maintenance. The certificate holder must determine the repair station's capability and then monitor its performance. In effect, a repair station under contract is an extension of the certificate holder's organization and maintenance facility. The certificate holder is expected to make the same inquiries concerning the repair station's capability and performance that it does for its own facility. Since 1956, this system has been shown to be effective by large and small operators who maintain their aircraft under part 121.

Section 135.413(b) is revised from the proposal in notice 77-17 to make it clearer. Section 135.413(b)(2) (proposed as paragraph (c)) is reworded to clarify the responsibilities of a certificate holder who maintains its aircraft.

§ 135.415 *Mechanical reliability reports. (Proposed § 135.337.)*

One commenter recommends that the reporting period should be extended to 72 hours because the certificate holder's employees work irregular hours. This comment has merit and § 135.415(d) is changed.

Several commenters indicate that no significant data is obtained by requiring mechanical reliability reports (MRR) for single-engine airplanes and helicopters. Another commenter states requiring MRR for single-engine aircraft will not provide significant data because these aircraft are not complex. An MRR indicates a safety-of-flight item regardless of the type or size of aircraft. Many single-engine aircraft are not complex but the complexity of the environment in which they operate (including instrument flight conditions) is increasing. Also, single-engine aircraft form the major part of the part 135 fleet. The additional data received on these aircraft will significantly enhance safety because that data is used to determine safety trends in aircraft and aircraft systems.

One commenter states that helicopters certificated for a passenger seating configuration of 19 seats or less should be excluded from the MRR requirements. Helicopters are a growing segment of the part 135 fleet and they operate in the same environment that airplanes do. The data received on helicopters will provide the same safety information for helicopters that the current system does for airplanes.

The phrase "because of flame out" was inadvertently omitted from the proposed rule and is added to § 135.415(a)(6).

§ 135.417 *Mechanical interruption summary report. (Proposed § 135.339.)*

One commenter indicates that a monthly reporting requirement is an undue burden on the operator of single-engine aircraft due to the lack of complexity. The lack of complexity of single-engine aircraft alone is not sufficient reason to exclude them from a mechanical interruption summary reporting requirement. However, insufficient additional safety data would be acquired to justify that report for single-engine aircraft. Adequate safety data about them will be submitted under § 135.415. Section 135.417 is changed to exclude these aircraft.

Another commenter recommends that § 135.417 be revised to include only "Commuter Air Carriers, as defined in part 298 of this title, operating airplanes that are certificated for a seating configuration, excluding any pilot seat, of 10 seats or more, or operating helicopters that are certificated for a passenger seating configuration of 20 seats or more." As discussed under § 135.411, the public interest would not be served by distinguishing helicopters from airplanes on the basis of the number of seats under this rule.

§ 135.421 *Additional maintenance requirements. (Proposed § 135.343.)*

Several commenters state that the term "manufacturer's recommended maintenance programs" could require compliance with all service letters suggesting installation of kits which may not be available. Section 135.421 requires compliance with the manufacturer's maintenance and inspection instructions in the maintenance manual that is required under the airworthiness standards that apply to the aircraft, aircraft engine, propeller, rotor or item of emergency equipment. The manual that must be made available to the owner under § 23.1529 of this chapter would satisfy this requirement. The maintenance instructions that are required by §§ 33.3 or 35.5 also would satisfy § 135.421 for the propeller or aircraft engine. Service letters or bulletins that are not required by an Airworthiness Directive are not included unless they are part of the maintenance manual or maintenance instructions required under the rules. A new § 135.421(b) is added to make this clear.

One commenter states that it has been operating engines for many years. It has a maintenance program that is reliable and that provides for engine inspection and overhaul times that are in excess of those required by the engine manufacturer. The purpose of § 135.421 is to give the certificate holder the opportunity to develop just this kind of program based upon its operating experience.

Several commenters suggest that § 135.421 apply only to nonturbine-powered aircraft. As discussed in detail under § 135.411, § 135.421 applies based on the type certificated passenger seating capacity of the aircraft, not its powerplant.

§ 135.423 *Maintenance, preventive maintenance, and alteration organization. (Proposed § 135.345.)*

Commenters claim that § 135.423 imposes an undue burden on small operators. They also state that separating the inspection function from the maintenance function is the major problem. Section 135.423 applies to certificate holders that use aircraft type certificated for 10 seats or more, excluding any pilot seat. A certificate holder who operates this size aircraft must see to it that the maintenance is performed by an adequate maintenance organization whether the work is done at the certificate holder's facilities or at another person's facility. This requirement is similar to one currently in part 121. Separation of required inspections from maintenance functions is necessary to ensure that work on required inspection items is properly performed. Considering the modern air taxi industry of today, this requirement is necessary.

This rule does not limit each person who is authorized to inspect to doing only inspections. They may perform maintenance in other areas. This section provides that the person who conducts the required inspection of an item may not be the person who performs the work on that item. Also, these items are a relatively small percentage of an operator's overall maintenance program.

One commenter recommends that all words relating to "other maintenance and preventive maintenance" in § 135.423(c) be deleted because that requires reinspection of items to be completed away from home base. The required inspection items should be properly done wherever the item is maintained.

One commenter asked for clarification of the term "adequate" in § 135.423(a). "Adequate" means that the operator has a program that complies with § 135.425. The certificate holder must ensure that maintenance, preventive maintenance and alterations are performed in accordance with its manual, that the work is done by competent personnel, that proper facilities and equipment are provided and that the aircraft is airworthy when released to service. The same commenter asked where qualified personnel could be obtained since there now is a shortage of qualified mechanics in the industry. The rule should, in fact, relieve this problem. An operator who must comply with § 135.411(a)(2) may use its employees who are not certificated mechanics, but who are qualified to be certificated as repairman under § 65.101 when recommended by the certificate holder.

One commenter recommends that each reference to a person other than a certificate holder be deleted from §§ 135.423 (a) and (b) because they have probably already been approved by the Administrator. If not, the commenter states the certificate holder should assume responsibility and sign the airworthiness release. The commenter suggests §§ 135.423 (a) and (b) be changed to state "that each certificate holder must have an adequate organization to perform the work," including "required inspection items." This change would require each operator to have a maintenance organization. An operator could not use another person with an adequate organization to perform maintenance, preventive maintenance and alteration and required inspections in accordance with the operator's manual.

The same commenter suggests that the second sentence of § 135.423(c) be deleted because the first sentence adequately covers the desired separation between inspection and maintenance functions. The first sentence requires that inspections be separated from other maintenance, preventive maintenance and alteration functions. The second sentence identifies the level in a certificate holder's organization where required inspection functions must be separate from the maintenance, preventive maintenance and alteration functions.

§ 135.425 *Maintenance, preventive maintenance, and alteration programs. (Proposed § 135.347.)*

One commenter on § 135.425 states it should only apply to helicopters that are certificated for a passenger seating configuration, excluding any pilot seat, of 19 or less. As discussed under § 135.411, the public interest would not be served by doing this. The same commenter states that operators of helicopters in remote areas cannot comply with § 135.425. A similar comment is discussed at length under § 135.411.

One commenter states that operators with small aircraft that carry nine passengers or less should be exempt from § 135.425. Section 135.411(a)(2) explicitly provides that.

One commenter states that maintenance performed under FAA-approved procedure is adequate and § 135.425 is not necessary. In September 1972, the National Transportation Safety Board released a report (NTSB-AAS 72-9) following an air taxi safety study of accidents in air taxi and commuter operations. The Board found the lack of properly managed maintenance programs was a contributing factor in air taxi accidents. The Board's recommendation was considered in the development of this rule.

§ 135.427 *Manual requirements. (Proposed § 135.349.)*

Several commenters object to § 135.427(a) requiring the operator to list in the manual "persons with whom it has arranged for the performance of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work." The commenter claims that this is too restrictive and elminates the ability to obtain quality work without undue delay. Section 135.427 does not prevent an operator from having maintenance performed by persons who are not listed in the manual. That would be impractical. The rule is flexible enough to allow maintenance to be performed on an "on call" basis. The operator is responsible for the airworthiness of its aircraft whoever performs the maintenance. Section 135.21(h) requires procedures for a pilot to obtain maintenance at a place where previous arrangements have not been made by the operator. This is in the current rules and has not been an undue burden. The rule is necessary to inform the certificate holder's personnel of those persons who may perform maintenance on its aircraft.

One commenter states that § 135.427 should only apply to operators that carry 20 or more passengers. As discussed under § 135.411, the public interest would not be served by doing this.

One commenter agrees with § 135.427 but expresses concern that there is no definite guidance supplied by FAA to develop a standard manual. The FAA will develop an Advisory Circular to provide operators with information to assist in developing acceptable programs and manuals.

A new § 135.427(c) is added that requires an operator to establish a system in its manual for the retention of certain maintenance records. This parallels § 121.369(c) and is referenced in § 135.439. Without § 135.427(c), a certificate holder could not use modern methods of collecting, recording or storing maintenance records. Several § 135.2 operators now use coded systems to perform, control and record their maintenance programs under § 121.369(c). Operators also use various maintenance control programs and techniques that are available in coded form. This change does not impose any additional recordkeeping requirements. A certificate holder now must comply with § 91.173(a)(1) which requires a record of the work performed. Without § 135.427(c), part 135 operators who are using coded systems under § 121.369(c) would have to revert to an uncoded recordkeeping system. This is because § 91.173 requires signatures and a written description of work accomplished on aircraft for all owners except those exempted by § 91.161(b).

§ 135.429 *Required inspection personnel. (Proposed § 135.351.)*

Several commenters oppose the separation of the required inspection items under § 135.429(c) from maintenance functions because it would impose hardships on the small operator or the small shop. This issue is discussed at length under § 135.423.

One commenter states that separating required inspections will require an operator to send an inspector to various places for tire changes or other unexpected maintenance. This may happen, but occurrences can be minimized by selective classification of required inspection items based on the operator's experience. Many maintenance tasks that are essential to a reliable and safe aircraft are not necessarily so critical that they should be required inspection items. Enough flexibility is provided under § 135.429(c) to enable an operator to manage a program that provides both safe and economic operations.

§ 135.431 *Continuing analysis and surveillance. (Proposed § 135.353.)*

Commenters on § 135.431 state that the rule should not apply to small operators. The applicability of the maintenance and inspection rules should not be based on the size of the certificate holder. They must be based on the type certificated seating capacity of the aircraft being used because that most appropriately reflects the size and complexity of the aircraft.

One commenter suggests combining §§ 135.431 (a) and (b) and deleting § 135.431(c). This would eliminate a certificate holder's privilege to petition the FAA to reconsider a notice of change of a program and should not be deleted.

§ 135.433 *Maintenance and preventive maintenance training program. (Proposed § 135.355.)*

The commenter on § 135.433 agrees with the concept of this rule but suggests that the statement "or a person performing maintenance * * * for it" in § 135.433 be deleted. The commenter states that it is impossible to insure that vendors or other organizations have adequate training programs. Adopting this suggestion would require each certificate holder to have a training program for each vendor or person who performs maintenance on its aircraft. Reviewing the qualifications and training of a person who performs maintenance for an operator is a more workable, less burdensome alternative.

§ 135.435 *Certificate requirements. (Proposed § 135.357.)*

Commenters object to § 135.435 because they assume that the words "appropriate airman certificate" in § 135.435(a) eliminate the certificate holder's prerogative to determine the qualifications of its management personnel, of persons who are directly in charge of maintenance, or of persons who perform inspection of required inspection items. This section only establishes the basic qualification that these people must hold an appropriate airman certificate. This insures that the person who performs these functions has basic knowledge of the regulations governing the performance of the maintenance, preventive maintenance or alterations.

§ 135.437 *Authority to perform and approve maintenance, preventive maintenance, and alterations. (Proposed § 135.359.)*

To allow a certificate holder to perform its own maintenance, preventive maintenance, and alterations, the words "perform or" are added to § 135.437(a) after the words "certificate holder."

§ 135.439 *Maintenance recording requirements. (Proposed § 135.361.)*

The commenters on § 135.439(a)(2)(i) object to the word "propeller." One suggests that the word "propeller" be deleted because the propeller consists of blades and hub and does not have a single time. The other commenter suggests that the word "propeller" be changed to read "propeller hub" because it is impossible to keep records on the blades. The definition of "propeller" in part 1 includes the hub and blades. Therefore, each propeller blade and hub is identified by model designation, part number, and serial number. Section 135.439(a)(2)(i) requires the total time in service for the blades, hub or other control component normally supplied by the manufacturer.

The commenters on §§ 135.439 and 135.439(a)(2)(iii) indicate that they consider the rule a duplication of recordkeeping requirements of part 91. The recordkeeping required under §§ 135.439 and 135.439(a)(2)(iii) is in place of the records required under § 91.173(a)(2)(i).

The word "rotor" is added to § 135.439(a)(2)(i) to require a record of the total time in service for a rotor. This is necessary because specific problems are being encountered with rotors and a number of airworthiness directives (AD) are being issued about rotors.

The words "date and" are added to § 135.439(a)(2)(v) to ensure that each AD is complied with by the date that it is due. The phrase "and, if the airworthiness directive involves recurring action, the time and date when the next action is required" also is added to § 135.439(a)(2)(v). A certificate holder is required to record the time and dates of recurring AD's because § 135.443 requires a certificate holder to maintain the current status of AD's. For an AD requiring recurring action, the time and date of the next required action is part of the current status. These changes clarify the rule.

The words "and repairs" are added to § 135.439(a)(2)(vi) because a repair is maintenance and repairs must be recorded to determine the airworthiness status of the aircraft.

§ 135.443 *Airworthiness release or aircraft log entry. (Proposed § 135.365.)*

Several commenters favor § 135.443 but object because making the statement outlined in § 135.443(b) each time a person performs maintenance on an aircraft is time consuming. One commenter suggests § 135.443 be amended to include the concept outlined in § 121.709(d). The procedures are included in § 135.443(c) as suggested.

One commenter suggests that the words "aircraft log entry" in § 135.443(b)(3) be changed to "aircraft maintenance records." The commenter states this requires an additional log because different times are used for the same documents in § 135.65. The aircraft log entry in § 135.443 is not an additional requirement. The log mentioned in § 135.65 may be the same log and may be part of the operator's system for maintenance recordkeeping. The log entry mentioned in § 135.443(b)(3) becomes a part of the aircraft records under § 135.439 and is not intended to duplicate other records. Section 135.439(a)(2) specifically requires the airworthiness release and the aircraft log entry to be made a part of the aircraft records.

DRAFTING INFORMATION

The principal authors of this document are B. L. Abram, L. D. Basham, D. W. Kress, F. E. Kurdys, D. A. Schroeder, W. J. Sullivan, T. G. Walenta, and L. J. Weston, Flight Standards Service, and R. C. Beitel and M. S. Filler, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENTS

Accordingly, parts 121, 127, and 135 of the Federal Aviation regulations (14 CFR parts 121, 127, and 135) and special Federal Aviation regulations 23, 30, and 33 are amended as follows, effective December 1, 1978:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By revising § 121.9 to read as follows:

§ 121.9 Operations of airplanes having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

No person may conduct operations with an airplane having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less, unless those operations are conducted under part 135 of this chapter, except §§ 135.5, 135.17, 135.27, 135.29, 135.31, 135.35, 135.37, and 135.39, and appropriate operations specifications in place of subparts E through K of this part. However, the holder of an air carrier operating certificate issued under this part may maintain its airplanes operated under part 135 of this chapter under a continuous airworthiness maintenance program that meets subpart L of this part and operations specifications

issued to it under this part. Operations specifications issued under this section contain the operating limitations and requirements that the Administrator finds necessary.

§ 121.13 Rules applicable to helicopter operations: deviation authority. [Amended]

2. By amending § 121.13(d) by (a) deleting the word "small" between the words "with" and "helicopters"; and (b) adding the words "having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less" after the word "helicopters".

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

3. By revising § 127.5 to read as follows:

§ 127.5 Operation of airplanes having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

No person may conduct operations with an airplane having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less, unless those operations are conducted under part 135 of this chapter, except §§ 135.5, 135.17, 135.27, 135.29, 135.31, 135.35, 135.37, and 135.39, and appropriate operations specifications. However, the holder of an air carrier operating certificate issued under this part may maintain its airplanes operated under part 135 of this chapter under a continuous airworthiness maintenance program that meets subpart I of this part and operations specifications issued to it under this part. Operations specifications issued under this section contain the operating limitations and requirements that the Administrator finds necessary.

4. By deleting special Federal Aviation regulation 23 in part 135.

5. By revoking special Federal Aviation regulations 30 and 33 in parts 121 and 135.

6. By revising part 135 to read as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

Subpart A—General

Sec.
135.1 Applicability.
135.2 Air taxi operations with large aircraft.
135.3 Rules applicable to operations subject to this part.
135.5 Certificate and operations specifications required.
135.7 Applicability of rules to unauthorized operators.
135.9 Duration of certificate.
135.10 Compliance dates for certain rules.
135.11 Application and issue of certificate and operations specifications.
135.13 Eligibility for certificate and operations specifications.
135.15 Amendment of certificate.
135.17 Amendment of operations specifications.
135.19 Emergency operations.
135.21 Manual requirements.
135.23 Manual contents.
135.25 Aircraft requirements.
135.27 Business office and operations base.
135.29 Use of business names.
135.31 Advertising.
135.33 Area limitations on operations.
135.35 Termination of operations.
135.37 Management personnel required.
135.39 Management personnel qualifications.
135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
135.43 Crewmember certificate: International operations: Application and issue.

Subpart B—Flight Operations

135.61 General.
135.63 Recordkeeping requirements.
135.65 Reporting mechanical irregularities.
135.67 Reporting potentially hazardous meteorological conditions and irregularities of communications or navigation facilities.
135.69 Restriction or suspension of operations: Continuation of flight in an emergency.
135.71 Airworthiness check.
135.73 Inspections and tests.
135.75 Inspectors credentials: Admission to pilots' compartment: Forward observer's seat.
135.77 Responsibility for operational control.
135.79 Flight locating requirements.
135.81 Informing personnel of operational information and appropriate changes.
135.83 Operating information required.
135.85 Carriage of persons without compliance with the passenger-carrying provisions of this part.
135.87 Carriage of cargo including carry-on baggage.
135.89 Pilot requirements: Use of oxygen.
135.91 Oxygen for medical use by passengers.
135.93 Autopilot: Minimum altitudes for use.
135.95 Airmen: Limitations on use of services.
135.97 Aircraft and facilities for recent flight experience.
135.99 Composition of flight crew.
135.101 Second in command required in IFR conditions.
135.103 Exception to second in command requirement: IFR operations.
135.105 Exception to second in command requirement: Approval for use of autopilot system.
135.107 Flight attendant crewmember requirement.
135.109 Pilot in command or second in command: Designation required.
135.111 Second in command required in category II operations.
135.113 Passenger occupancy of pilot seat.
135.115 Manipulation of controls.
135.117 Briefing of passengers before flight.
135.119 Prohibition against carriage of weapons.
135.121 Alcoholic beverages.
135.123 Emergency and emergency evacuation duties.

Subpart C—Aircraft and Equipment

135.141 Applicability.
135.143 General requirements.
135.145 Aircraft proving tests.
135.147 Dual controls required.
135.149 Equipment requirements: General.
135.151 Cockpit voice recorders.
135.153 Ground proximity warning system.
135.155 Fire extinguishers: Passenger-carrying aircraft.
135.157 Oxygen equipment requirements.
135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.
135.161 Radio and navigational equipment: Carrying passengers under VFR at night or under VFR over-the-top.
135.163 Equipment requirements: Aircraft carrying passengers under IFR.
135.165 Radio and navigational equipment: Extended overwater or IFR operations.
135.167 Emergency equipment: Extended overwater operations.
135.169 Additional airworthiness requirements.
135.171 Shoulder harness installation at flight crewmember stations.
135.173 Airborne thunderstorm detection equipment requirements.
135.175 Airborne weather radar equipment requirements.
135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.
135.179 Inoperable instruments and equipment for multiengine aircraft.
135.181 Performance requirements: Aircraft operated over-the-top or in IFR conditions.
135.183 Performance requirements: Land aircraft operated over water.
135.185 Empty weight and center of gravity: Currency requirement.

Subpart D—VFR/IFR Operating Limitations and Weather Requirements

135.201 Applicability.
135.203 VFR: Minimum altitudes.
135.205 VFR: Visibility requirements.
135.207 VFR: Helicopter surface reference requirements.
135.209 VFR: Fuel supply.
135.211 VFR: Over-the-top carrying passengers: Operating limitations.
135.213 Weather reports and forecasts.
135.215 IFR: Operating limitations.
135.217 IFR: Takeoff limitations.
135.219 IFR: Destination airport weather minimums.
135.221 IFR: Alternate airport weather minimums.
135.223 IFR: Alternate airport requirements.
135.225 IFR: Takeoff, approach and landing minimums.
135.227 Icing conditions: Operating limitations.
135.229 Airport requirements.

Subpart E—Flight Crewmember Requirements

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135.241 Applicability.
135.243 Pilot in command qualifications.
135.245 Second in command qualifications.
135.247 Pilot qualifications: Recent experience.

Subpart F—Flight Crewmember Flight and Duty Time Limitations

135.261 Flight and duty time limitations.

Subpart G—Crewmember Testing Requirements

135.291 Applicability.
135.293 Initial and recurrent pilot testing requirements.
135.295 Initial and recurrent flight attendant crewmember testing requirements.
135.297 Pilot in command: Instrument proficiency check requirements.
135.299 Pilot in command: Line checks: Routes and airports.
135.301 Crewmember: Tests and checks, grace provisions, training to accepted standards.
135.303 Check pilot authorization: Application and issue.

Subpart H—Training

135.321 Applicability and terms used.
135.323 Training program: General.
135.325 Training program and revision: Initial and final approval.
135.327 Training program: Curriculum.
135.329 Crewmember training requirements.
135.331 Crewmember emergency training.
135.333 Training requirements: Handling and carriage of hazardous materials.
135.335 Approval of aircraft simulators and other training devices.
135.337 Training program: Check airmen and instructor qualifications.
135.339 Check airmen and flight instructors: Initial and transition training.
135.341 Pilot and flight attendant crewmember training programs.
135.343 Crewmember initial and recurrent training requirements.
135.345 Pilots: Initial, transition, and upgrade ground training.
135.347 Pilots: Initial, transition, upgrade, and differences flight training.
135.349 Flight attendants: Initial and transition ground training.
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Subpart I—Airplane Performance Operating Limitations

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135.363 General.
135.365 Large transport category airplanes: Reciprocating engine powered: Weight limitations.
135.367 Large transport category airplanes: Reciprocating engine powered: Takeoff limitations.
135.369 Large transport category airplanes: Reciprocating engine powered: En route limitations: All engines operating.
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Appendix A.

Subpart A—General

§ 135.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part prescribes rules governing—

(1) Air taxi operations conducted under the exemption authority of Part 298 of this title;

(2) The transportation of mail by aircraft conducted under a postal service contract awarded under section 5402c of Title 39, United States Code;

(3) The carrying in air commerce by any person, other than as an air carrier, of persons or property for compensation or hire (commercial operations) in aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less; and

(4) Each person who is on board an aircraft being operated under this part.

(b) This part does not apply to—

(1) Student instruction;

(2) Nonstop sightseeing flights that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport;

(3) Ferry or training flights;

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Fire fighting;

(v) Helicopter operations in construction or repair work (but not including transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

(5) Sightseeing flights conducted in hot air balloons;

(6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;

(7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff, if—

(i) Not more than two passengers are carried in the helicopter in addition to the required flight crew;

(ii) Each flight is made under VFR during the day;

(iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of Part 91 of this chapter;

(iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;

(v) The number of flights does not exceed a total of six in any calendar year;

(vi) Each flight has been approved by the Administrator; and

(vii) Cargo is not carried in or on the helicopter;

(8) Operations conducted under Part 133 or 375 of this title;

(9) Emergency mail service conducted under section 405(h) of the Federal Aviation Act of 1958; or

(10) Carriage of a candidate in a Federal election, an agent of the candidate, or person traveling on behalf of the candidate, if—

(i) The principal business of the person operating the aircraft is not that of an air carrier or commercial operator; and

(ii) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR Chapter 1).

The terms "candidate" and "election" have the same meaning as that set forth in the regulations of the Federal Election Commission.

§ 135.2 Air taxi operations with large aircraft.

(a) Except as provided in paragraph (d) of this section, no person may conduct air taxi operations in large aircraft under an individual exemption and authorization issued by the Civil Aeronautics Board or under the exemption authority of Part 298 of this title, unless that person—

(1) Complies with the certification requirements for supplemental air carriers in Part 121 of this chapter, except that the person need not obtain, and that person is not eligible for, a certificate under that part; and

(2) Conducts those operations under the rules of Part 121 of this chapter that apply to supplemental air carriers.

However, the Administrator may issue operations specifications which require an operator to comply with the rules of Part 121 of this chapter that apply to domestic or flag air carriers, as appropriate, in place of the rules required by paragraph (a)(2) of this section, if the Administrator determines compliance with those rules is necessary to provide an appropriate level of safety for the operation.

(b) The holder of an operating certificate issued under this part who is required to comply with Subpart L of Part 121 of this chapter, under paragraph (a) of this section, may perform and approve maintenance, preventive maintenance, and alterations on aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less as provided in that subpart. The aircraft so maintained shall be identified by registration number in the operations specifications of the certificate holder using the aircraft.

(c) Operations that are subject to paragraph (a) of this section are not subject to §§ 135.21 through 135.43 of Subpart A and Subparts B through J of this part. Seaplanes used in operations that are subject to paragraph (a) of this section are not subject to § 121.291(a) of this chapter.

(d) Operations conducted with aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less, and a maximum payload capacity of 7,500 pounds or less shall be conducted under the rules of this part. However, a certificate holder who is conducting operations on December 1, 1978, in aircraft described in this paragraph may continue to operate under paragraph (a) of this section.

(e) For the purposes of this part—

(1) "Maximum payload capacity" means:

(i) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, foods and beverages and supplies and equipment related to foods and beverages, but not including disposable fuel or oil);

(ii) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flight crew). The allowance for the weight of the crew, oil, and fuel is as follows:

(A) Crew—200 pounds for each crewmember required under this chapter.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required under this chapter for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(2) "Empty weight" means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(3) "Maximum zero fuel weight" means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet or the approved Aircraft Flight Manual, or both.

(4) For the purposes of this paragraph, "justifiable aircraft equipment" means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity specified in paragraph (d) of this section.

§ 135.3 Rules applicable to operations subject to this part.

Each person operating an aircraft in operations under this part shall—

(a) While operating inside the United States, comply with the applicable rules of this chapter; and

(b) While operating outside the United States, comply with Annex 2, Rules of the Air, to the Convention on International Civil Aviation or the regulations of any foreign country, whichever applies, and with any rules of Parts 61 and 91 of this chapter and this part that are more restrictive than that Annex or those regulations and that can be complied with without violating that Annex or those regulations. Annex 2 is incorporated by reference in § 91.1(c) of this chapter.

§ 135.5 Certificate and operations specifications required.

No person may operate an aircraft under this part without, or in violation of, an air taxi/commercial operator (ATCO) operating certificate and appropriate operations specifications issued under this part, or, for operations with large aircraft having a maximum passenger seating configuration, excluding any pilot seat, of more than 30 seats, or a maximum payload capacity of more than 7,500 pounds, without, or in violation of, appropriate operations specifications issued under Part 121 of this chapter.

§ 135.7 Applicability of rules to unauthorized operators.

The rules in this part which apply to a person certificated under § 135.5 also apply to a person who engages in any operation governed by this part without an appropriate certificate and operations specifications required by § 135.5.

§ 135.9 Duration of certificate.

(a) An ATCO operating certificate is effective until surrendered, suspended or revoked. The holder of an ATCO operating certificate that is suspended or revoked shall return it to the Administrator.

(b) Except as provided in paragraphs (c) and (d) of this section, an ATCO operating certificate in effect on December 1, 1978, expires on February 1, 1979. The certificate holder must continue to conduct operations under Part 135 and the operations specifications in effect on November 30, 1978, until the certificate expires.

(c) If the certificate holder applies before February 1, 1979, for new operations specifications under this part, the operating certificate held continues in effect and the certificate holder must continue operations under Part 135 and operations specifications in effect on November 30, 1978, until the earliest of the following—

(1) The date on which new operations specifications are issued; or

(2) The date on which the Administrator notifies the certificate holder that the application is denied; or

(3) August 1, 1979.

If new operations specifications are issued under paragraph (c)(1) of this paragraph, the ATCO operating certificate continues in effect until surrendered, suspended or revoked under paragraph (a) of this section.

(d) A certificate holder may obtain an extension of the expiration date in paragraph (c) of this section, but not beyond December 1, 1979, from the Director, Flight Standards Service, if before July 1, 1979, the certificate holder—

(1) Shows that due to the circumstances beyond its control it cannot comply by the expiration date; and

(2) Submits a schedule for compliance, acceptable to the Director, indicating that compliance will be achieved at the earliest practicable date.

(e) The holder of an ATCO operating certificate that expires, under paragraphs (b), (c), or (d) of this section, shall return it to the Administrator.

§ 135.10 Compliance dates for certain rules.

(a) A certificate holder or pilot is allowed until June 1, 1979, to comply with the following sections:

(1) A third bank and pitch indicator (artificial horizon) (§ 135.149(c)).

(2) Shoulder harness at flight crewmember stations (§ 135.171(a)).

(3) Airline transport pilot certificate (§ 135.243(a)).

(4) Instrument rating (§ 135.243(b)(iii)).

(b) A certificate holder is allowed until December 1, 1979, to comply with the following sections:

(1) Cockpit voice recorder (§ 135.151).

(2) Ground proximity warning system or other approved system (§ 135.153).

(3) Airborne thunderstorm detection equipment (§ 135.173).

(c) A certificate holder or pilot may obtain an extension of the compliance date in paragraph (a) or (b) of this section, but not beyond December 1, 1980, from the Director, Flight Standards Service, if before the compliance date in paragraph (a) or (b) of this section—

(1) The certificate holder or pilot shows that due to the circumstances beyond its control they cannot comply by that date; and

(2) The certificate holder or pilot has submitted before that date a schedule for compliance, acceptable to the Director, indicating that compliance will be achieved at the earliest practicable date.

§ 135.11 Application and issue of certificate and operations specifications.

(a) An application for an ATCO operating certificate and appropriate operations specifications is made on a form and in a manner prescribed by the Administrator and filed with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office is located.

(b) An applicant who meets the requirements of this part is entitled to—

(1) An ATCO operating certificate containing all business names under which the certificate holder may conduct operations and the address of each business office used by the certificate holder; and

(2) Separate operations specifications, issued to the certificate holder, containing:

(i) The type and area of operations authorized.

(ii) The category and class of aircraft that may be used in those operations.

(iii) Registration numbers and types of aircraft that are subject to an airworthiness maintenance program required by § 135.411(a)(2), including time limitations or standards for determining time limitations, for overhauls, inspections, and checks for airframes, aircraft engines, propellers, rotors, appliances, and emergency equipment.

(iv) Registration numbers of aircraft that are to be inspected under an approved aircraft inspection program under § 135.419.

(v) Additional maintenance items required by the Administrator under § 135.421.

(vi) Any authorized deviation from this part.

(vii) Any other items the Administrator may require or allow to meet any particular situation.

§ 135.13 Eligibility for certificate and operations specifications.

(a) To be eligible for an ATCO operating certificate and appropriate operations specifications, a person must—

(1) Be a citizen of the United States, a partnership of which each member is a citizen of the United States, or a corporation or association created or organized under the laws of the United States or any state, territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers are citizens of the United States and in which at least 75 percent of the voting interest is owned or controlled by citizens of the United States or one of its possessions; and

(2) Show, to the satisfaction of the Administrator, that the person is able to conduct each kind of operation for which the person seeks authorization in compliance with applicable regulations; and

(3) Hold any economic authority that may be required by the Civil Aeronautics Board.

However, no person holding a commercial operator operating certificate issued under Part 121 of this chapter is eligible for an ATCO operating certificate unless the person shows to the satisfaction of the Administrator that the person's contract carriage business in large aircraft, having a maximum passenger seating configuration, excluding any pilot seat, of more than 30 seats or a maximum payload capacity of more than 7,500 pounds, will not result directly or indirectly from the person's air taxi business.

(b) The Administrator may deny any applicant a certificate under this part if the Administrator finds—

(1) That an air carrier or commercial operator operating certificate under Part 121 or an ATCO operating certificate previously issued to the applicant was revoked; or

(2) That a person who was employed in a position similar to general manager, director of operations, director of maintenance, chief pilot, or chief inspector, or who has exercised control with respect to any ATCO operating certificate holder, air carrier, or commercial operator, whose operating certificate has been revoked, will be employed in any of those positions or a similar position, or will be in control of or have a substantial ownership interest in the applicant, and that the person's employment or control contributed materially to the reasons for revoking that certificate.

§ 135.15 Amendment of certificate.

(a) The Administrator may amend an ATCO operating certificate—

(1) On the Administrator's own initiative, under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429) and Part 13 of this chapter; or

(2) Upon application by the holder of that certificate.

(b) The certificate holder must file an application to amend an ATCO operating certificate at least 15 days before the date proposed by the applicant for the amendment to become effective, unless a shorter filing period is approved. The application must be on a form and in a manner prescribed by the Administrator and must be submitted to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder.

(c) The FAA Flight Standards District Office charged with the overall inspection of the certificate holder grants an amendment to the ATCO operating certificate if it is determined that safety in air commerce and the public interest allow that amendment.

(d) Within 30 days after receiving a refusal to amend the operating certificate, the certificate holder may petition the Director, Flight Standards Service, to reconsider the request.

§ 135.17 Amendment of operations specifications.

(a) The FAA Flight Standards District Office charged with the overall inspection of the certificate holder may amend any operations specifications issued under this part if—

(1) It determines that safety in air commerce requires that amendment; or

(2) Upon application by the holder, that District Office determines that safety in air commerce allows that amendment.

(b) The certificate holder must file an application to amend operations specifications at least 15 days before the date proposed by the applicant for the amendment to become effective, unless a shorter filing period is approved. The application must be on a form and in a manner prescribed by the Administrator and be submitted to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder.

(c) Within 30 days after a notice of refusal to approve a holder's application for amendment is received, the holder may petition the Director, Flight Standards Service, to reconsider the refusal to amend.

(d) When the FAA Flight Standards District Office charged with the overall inspection of the certificate holder amends operations specifications, that District Office gives notice in writing to the holder of a proposed amendment to the operations specifications, fixing a period of not less than 7 days within which the holder may submit written information, views, and arguments concerning the proposed amendment. After consideration of all relevant matter presented, that District Office notifies the holder of any amendment adopted, or a rescission of the notice. The amendment becomes effective not less than 30 days after the holder receives notice of the adoption of the amendment, unless the holder petitions the Director, Flight Standards Service, for reconsideration of the amendment. In that case, the effective date of the amendment is stayed pending a decision by the Director. If the Director finds there is an emergency requiring immediate action as to safety in air commerce that makes the provisions of this paragraph impracticable or contrary to the public interest, the Director notifies the certificate holder that the amendment is effective on the date of receipt, without previous notice.

§ 135.19 Emergency operations.

(a) In an emergency involving the safety of persons or property, the certificate holder may deviate from the rules of this part relating to aircraft and equipment and weather minimums to the extent required to meet that emergency.

(b) In an emergency involving the safety of persons or property, the pilot in command may deviate from the rules of this part to the extent required to meet that emergency.

(c) Each person who, under the authority of this section, deviates from a rule of this part shall, within 10 days, excluding Saturdays, Sundays, and Federal holidays, after the deviation, send to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder a complete report of the aircraft operation involved, including a description of the deviation and reasons for it.

§ 135.21 Manual requirements.

(a) Each certificate holder, other than one who is the only pilot used in the certificate holder's operations, shall prepare and keep current a manual setting forth the certificate holder's procedures and policies acceptable to the Administrator. This manual must be used by the certificate holder's flight, ground, and maintenance personnel in conducting its operations. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, all or part of the manual is not necessary for guidance of flight, ground, or maintenance personnel.

(b) Each certificate holder shall maintain at least one copy of the manual at its principal operations base.

(c) The manual must not be contrary to any applicable Federal regulations, foreign regulation applicable to the certificate holder's operations in foreign countries, or the certificate holder's operating certificate or operations specifications.

(d) A copy of the manual, or appropriate portions of the manual (and changes and additions) shall be made available to maintenance and ground operations personnel by the certificate holder and furnished to—

(1) Its flight crewmembers; and

(2) Representatives of the Administrator assigned to the certificate holder.

(e) Each employee of the certificate holder to whom a manual or appropriate portions of it are furnished under paragraph (d)(1) of this section shall keep it up to date with the changes and additions furnished to them.

(f) Except as provided in paragraph (g) of this section, each certificate holder shall carry appropriate parts of the manual on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) If a certificate holder conducts aircraft inspections or maintenance at specified stations where it keeps the approved inspection program manual, it is not required to carry the manual aboard the aircraft en route to those stations.

§ 135.23 Manual contents.

Each manual shall have the date of the last revision on each revised page. The manual must include—

(a) The name of each management person required under § 135.37(a) who is authorized to act for the certificate holder, the person's assigned area of responsibility, and the person's duties, responsibilities, and authority;

(b) Procedures for ensuring compliance with aircraft weight and balance limitations and, for multiengine aircraft, for determining compliance with § 135.185;

(c) Copies of the certificate holder's operations specifications or appropriate extracted information, including area of operations authorized, category and class of aircraft authorized, crew complements, and types of operations authorized;

(d) Procedures for complying with accident notification requirements;

(e) Procedures for ensuring that the pilot in command knows that required airworthiness inspections have been made and that the aircraft has been approved for return to service in compliance with applicable maintenance requirements;

(f) Procedures for reporting and recording mechanical irregularities that come to the attention of the pilot in command before, during, and after completion of a flight;

(g) Procedures to be followed by the pilot in command for determining that mechanical irregularities or defects reported for previous flights have been corrected or that correction has been deferred;

(h) Procedures to be followed by the pilot in command to obtain maintenance, preventive maintenance, and servicing of the aircraft at a place where previous arrangements have not been made by the operator, when the pilot is authorized to so act for the operator;

(i) Procedures under § 135.179 for the release for, or continuation of, flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;

(j) Procedures for refueling aircraft, eliminating fuel contamination, protecting from fire (including electrostatic protection), and supervising and

protecting passengers during refueling;

(k) Procedures to be followed by the pilot in command in the briefing under § 135.117;

(l) Flight locating procedures, when applicable;

(m) Procedures for ensuring compliance with emergency procedures, including a list of the functions assigned each category of required crewmembers in connection with an emergency and emergency evacuation duties under § 135.123;

(n) En route qualification procedures for pilots, when applicable;

(o) The approved aircraft inspection program, when applicable;

(p) Procedures and instructions to enable personnel to recognize hazardous materials, as defined in Title 49 CFR, and if these materials are to be carried, stored, or handled, procedures and instructions for—

(1) Accepting shipment of hazardous material required by Title 49 CFR, to assure proper packaging, marking, labeling, shipping documents, compatibility of articles, and instructions on their loading, storage, and handling;

(2) Notification and reporting hazardous material incidents as required by Title 49 CFR; and

(3) Notification of the pilot in command when there are hazardous materials aboard, as required by Title 49 CFR;

(q) Procedures for the evacuation of persons who may need the assistance of another person to move expeditiously to an exit if an emergency occurs; and

(r) Other procedures and policy instructions regarding the certificate holder's operations, that are issued by the certificate holder.

§ 135.25 Aircraft requirements.

(a) No certificate holder may operate an aircraft under this part unless that aircraft—

(1) Is registered as a civil aircraft of the United States and carries an appropriate and current airworthiness certificate issued under this chapter; and

(2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

(b) Each certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation. However, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than air taxi or commercial operations and does not require the certificate holder to have exclusive use of all aircraft that the certificate holder uses.

(c) For the purposes of paragraph (b) of this section, a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.

§ 135.27 Business office and operations base.

(a) Each certificate holder shall maintain a principal business office.

(b) Each certificate holder shall, before establishing or changing the location of any business office or operations base, except a temporary operations base, notify in writing the FAA Flight Standards District Office charged with the overall inspection of the certificate holder.

(c) No certificate holder who establishes or changes the location of any business office or operations base, except a temporary operations base, may operate an aircraft under this part unless the certificate holder complies with paragraph (b) of this section.

§ 135.29 Use of business names.

No certificate holder may operate an aircraft under this part under a business name that is not on the certificate holder's operating certificate.

§ 135.31 Advertising.

No certificate holder may advertise or otherwise offer to perform operations subject to this part that are not authorized by the certificate holder's operating certificate and operations specifications.

§ 135.33 Area limitations on operations.

(a) No person may operate an aircraft in a geographical area that is not specifically authorized by appropriate operations specifications issued under this part.

(b) No person may operate an aircraft in a foreign country unless that person is authorized to do so by that country.

§ 135.35 Termination of operations.

Within 30 days after a certificate holder terminates operations under this part, the operating certificate and operations specifications must be surrendered by the certificate holder to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder.

§ 135.37 Management personnel required.

(a) Each certificate holder, other than one who is the only pilot used in the certificate holder's operations, must have enough qualified management personnel in the following or equivalent positions to ensure safety in its operations:

(1) Director of operations.

(2) Chief pilot.

(3) Director of maintenance.

(b) Upon application by the certificate holder, the Administrator may approve different positions or numbers of positions than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform its operations safely under the direction of fewer or different categories of management personnel.

(c) Each certificate holder shall—

(1) Set forth the duties, responsibilities, and authority of the personnel required by this section in the manual required by § 135.21;

(2) List in the manual required by § 135.21 the name of the person or persons assigned to those positions; and

(3) Within 10 working days, notify the FAA Flight Standards District Office charged with the overall inspection of the certificate holder of any change made in the assignment of persons to the listed positions.

§ 135.39 Management personnel qualifications.

(a) *Director of operations.* No person may serve as director of operations under § 135.37(a) unless that person knows the contents of the manual required by § 135.21, the operations specifications, the provisions of this part and other applicable regulations necessary for the proper performance of the person's duties and responsibilities and:

(1) The director of operations for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate must—

(i) Hold or have held an airline transport pilot certificate; and

(ii) Have at least 3 years of experience as pilot in command of an aircraft operated under this part, Part 121 or Part 127 of this chapter; or

(iii) Have at least 3 years of experience as director of operations with a certificate holder operating under this part, Part 121 or Part 127 of this chapter.

(2) The director of operations for a certificate holder who is not conducting any operation for which the pilot

in command is required to hold an airline transport pilot certificate must—

(i) Hold or have held a commercial pilot certificate; and

(ii) Have at least 3 years of experience as a pilot in command of an aircraft operated under this part, Part 121 or Part 127 of this chapter; or

(iii) Have at least 3 years of experience as director of operations with a certificate holder operating under this part, Part 121 or Part 127 of this chapter.

(b) *Chief pilot.* No person may serve as chief pilot under § 135.37(a) unless that person knows the contents of the manual required by § 135.21, the operations specifications, the provisions of this part and other applicable regulations necessary for the proper performance of the person's duties, and:

(1) The chief pilot of a certificate holder conducting any operation for which the pilot in command is required to hold an airline transport pilot certificate must—

(i) Hold a current airline transport pilot certificate with appropriate ratings for at least one of the types of aircraft used; and

(ii) Have at least 3 years of experience as a pilot in command of an aircraft under this part, Part 121 or Part 127 of this chapter.

(2) The chief pilot of a certificate holder who is not conducting any operation for which the pilot in command is required to hold an airline transport pilot certificate must—

(i) Hold a current commercial pilot certificate with an instrument rating; and

(ii) Have at least 3 years of experience as a pilot in command of an aircraft under this part, Part 121 or Part 127 of this chapter.

(c) *Director of maintenance.* No person may serve as a director of maintenance under § 135.37(a) unless that person knows the maintenance sections of the certificate holder's manual, the operations specifications, the provisions of this part and other applicable regulations necessary for the proper performance of the person's duties, and—

(1) Holds a mechanic certificate with both airframe and powerplant ratings; and

(2) Has at least 3 years of maintenance experience as a certificated mechanic on aircraft, including, at the time of appointment as director of maintenance, the recent experience requirements of § 65.83 of this chapter in the same category and class of aircraft as used by the certificate holder, or at least 3 years of experience with a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

(d) The Director, Flight Standards Service, may authorize a deviation from this section if the Director finds that the person has had equivalent aeronautical experience.

§ 135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate issued under this part allows any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 135.43 Crewmember certificate: international operations: application and issue.

(a) This section provides for the issuance of a crewmember certificate to United States citizens who are employed by certificate holders as crewmembers on United States registered aircraft engaged in international air commerce. The purpose of the certificate is to facilitate the entry and clearance of those crewmembers into ICAO contracting states. They are issued under Annex 9, as amended, to the Convention on International Civil Aviation.

(b) An application for a crewmember certificate is made on FAA Form 8060–6, "Application for Crewmember Certificate," to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder by whom the applicant is employed. The certificate is issued on FAA Form 8060–42, "Crewmember Certificate."

(c) The holder of a certificate issued under this section, or the certificate holder by whom the holder is employed, shall surrender the certificate for cancellation at the nearest FAA Flight Standards District Office or submit it for cancellation to the Airmen Certification Branch, AAC–260, P.O. Box 25082, Oklahoma City, Oklahoma 73125, at the termination of the holder's employment with that certificate holder.

Subpart B—Flight Operations

§ 135.61 General.

This subpart prescribes rules, in addition to those in Part 91 of this chapter, that apply to operations under this part.

§ 135.63 Recordkeeping requirements.

(a) Each certificate holder shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator the following—

(1) The certificate holder's operating certificate;

(2) The certificate holder's operations specifications;

(3) A current list of the aircraft used or available for use in operations under this part and the operations for which each is equipped; and

(4) An individual record of each pilot used in operations under this part, including the following information:

(i) The full name of the pilot.

(ii) The pilot certificate (by type and number) and ratings that the pilot holds.

(iii) The pilot's aeronautical experience in sufficient detail to determine the pilot's qualifications to pilot aircraft in operations under this part.

(iv) The pilot's current duties and the date of the pilot's assignment to those duties.

(v) The effective date and class of the medical certificate that the pilot holds.

(vi) The date and result of each of the initial and recurrent competency tests and proficiency and route checks required by this part and the type of aircraft flown during that test or check.

(vii) The pilot's flight time in sufficient detail to determine compliance with the flight time limitations of this part.

(viii) The pilot's check pilot authorization, if any.

(ix) Any action taken concerning the pilot's release from employment for physical or professional disqualification.

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this part.

(b) Each certificate holder shall keep each record required by paragraph (a)(3) of this section for at least 6 months, and each record required by paragraph (a)(4) of this section for at least 12 months, after it is made.

(c) For multiengine aircraft, each certificate holder is responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest must be prepared before each takeoff and must include—

(1) The number of passengers;

(2) The total weight of the loaded aircraft;

(3) The maximum allowable takeoff weight for that flight;

(4) The center of gravity limits;

(5) The center of gravity of the loaded aircraft, except that the actual center of gravity need not be computed if the aircraft is loaded according to a loading schedule or other approved method that ensures that the center of gravity of the loaded aircraft is within approved limits. In those cases, an entry shall be made on the manifest indicating that the center of gravity is within limits according to a load-

ing schedule or other approved method;

(6) The registration number of the aircraft or flight number;

(7) The origin and destination; and

(8) Identification of crew members and their crew position assignments.

(d) The pilot in command of an aircraft for which a load manifest must be prepared shall carry a copy of the completed load manifest in the aircraft to its destination. The certificate holder shall keep copies of completed load manifests for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

§ 135.65 Reporting mechanical irregularities.

(a) Each certificate holder shall provide an aircraft maintenance log to be carried on board each aircraft for recording or deferring mechanical irregularities and their correction.

(b) The pilot in command shall enter or have entered in the aircraft maintenance log each mechanical irregularity that comes to the pilot's attention during flight time. Before each flight, the pilot in command shall, if the pilot does not already know, determine the status of each irregularity entered in the maintenance log at the end of the preceding flight.

(c) Each person who takes corrective action or defers action concerning a reported or observed failure or malfunction of an airframe, powerplant, propeller, rotor, or applicance, shall record the action taken in the aircraft maintenance log under the applicable maintenance requirements of this chapter.

(d) Each certificate holder shall establish a procedure for keeping copies of the aircraft maintenance log required by this section in the aircraft for access by appropriate personnel and shall include that procedure in the manual required by § 135.21.

§ 135.67 Reporting potentially hazardous meteorological conditions and irregularities of communications or navigation facilities.

Whenever a pilot encounters a potentially hazardous meteorological condition or an irregularity in a ground communications or navigational facility in flight, the knowledge of which the pilot considers essential to the safety of other flights, the pilot shall notify an appropriate ground radio station as soon as practicable and request that the information be disseminated.

§ 135.69 Restriction or suspension of operations: continuation of flight in an emergency.

(a) During operations under this part, if a certificate holder or pilot in command knows of conditions, including airport and runway conditions, that are a hazard to safe operations, the certificate holder or pilot in command, as the case may be, shall restrict or suspend operations as necessary until those conditions are corrected.

(b) No pilot in command may allow a flight to continue toward any airport of intended landing under the conditions set forth in paragraph (a) of this section, unless, in the opinion of the pilot in command, the conditions that are a hazard to safe operations may reasonably be expected to be corrected by the estimated time of arrival or, unless there is no safer procedure. In the latter event, the continuation toward that airport is an emergency situation under § 135.19.

§ 135.71 Airworthiness check.

The pilot in command may not begin a flight unless the pilot determines that the airworthiness inspections required by § 91.169 of this chapter, or § 135.419, whichever is applicable, have been made.

§ 135.73 Inspections and tests.

Each certificate holder and each person employed by the certificate holder shall allow the Administrator, at any time or place, to make inspections or tests (including en route inspections) to determine the holder's compliance with the Federal Aviation Act of 1958, applicable regulations, and the certificate holder's operating certificate, and operations specifications.

§ 135.75 Inspectors credentials: admission to pilots' compartment: forward observer's seat.

(a) Whenever, in performing the duties of conducting an inspection, an FAA inspector presents an Aviation Safety Inspector credential, FAA Form 110A, to the pilot in command of an aircraft operated by the certificate holder, the inspector must be given free and uninterrupted access to the pilot compartment of that aircraft. However, this paragraph does not limit the emergency authority of the pilot in command to exclude any person from the pilot compartment in the interest of safety.

(b) A forward observer's seat on the flight deck, or forward passenger seat with headset or speaker must be provided for use by the Administrator while conducting en route inspections. The suitability of the location of the seat and the headset or speaker for use in conducting en route inspections is determined by the Administrator.

§ 135.77 Responsibility for operational control.

Each certificate holder is responsible for operational control and shall list, in the manual required by § 135.21, the name and title of each person authorized by it to exercise operational control.

§ 135.79 Flight locating requirements.

(a) Each certificate holder must have procedures established for locating each flight, for which an FAA flight plan is not filed, that—

(1) Provide the certificate holder with at least the information required to be included in a VFR flight plan;

(2) Provide for timely notification of an FAA facility or search and rescue facility, if an aircraft is overdue or missing; and

(3) Provide the certificate holder with the location, date, and estimated time for reestablishing radio or telephone communications, if the flight will operate in an area where communications cannot be maintained.

(b) Flight locating information shall be retained at the certificate holder's principal place of business, or at other places designated by the certificate holder in the flight locating procedures, until the completion of the flight.

(c) Each certificate holder shall furnish the representative of the Administrator assigned to it with a copy of its flight locating procedures and any changes or additions, unless those procedures are included in a manual required under this part.

§ 135.81 Informing personnel of operational information and appropriate changes.

Each certificate holder shall inform each person in its employment of the operations specifications that apply to that person's duties and responsibilities and shall make available to each pilot in the certificate holder's employ the following materials in current form:

(a) Airman's Information Manual (Alaska Supplement in Alaska and Pacific Chart Supplement in Pacific-Asia Regions) or a commercial publication that contains the same information.

(b) This part and Part 91 of this chapter.

(c) Aircraft Equipment Manuals, and Aircraft Flight Manual or equivalent.

(d) For foreign operations, the International Flight Information Manual or a commercial publication that contains the same information concerning the pertinent operational and entry requirements of the foreign country or countries involved.

§ 135.83 Operating information required.

(a) The operator of an aircraft must provide the following materials, in cur-

rent and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them:

(1) A cockpit checklist.

(2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate.

(3) Pertinent aeronautical charts.

(4) For IFR operations, each pertinent navigational en route, terminal area, and approach and letdown chart.

(5) For multiengine aircraft, one-engine-inoperative climb performance data and if the aircraft is approved for use in IFR or over-the-top operations, that data must be sufficient to enable the pilot to determine compliance with § 135.181(a)(2).

(b) Each cockpit checklist required by paragraph (a)(1) of this section must contain the following procedures: (1) Before starting engines; (2) Before takeoff; (3) Cruise; (4) Before landing; (5) After landing; (6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other emergency procedures necessary for safety.

§ 135.85 Carriage of persons without compliance with the passenger-carrying provisions of this part.

The following persons may be carried aboard an aircraft without complying with the passenger-carrying requirements of this part:

(a) A crewmember or other employee of the certificate holder.

(b) A person necessary for the safe handling of animals on the aircraft.

(c) A person necessary for the safe handling of hazardous materials (as defined in Subchapter C of Title 49 CFR).

(d) A person performing duty as a security or honor guard accompanying a shipment made by or under the authority of the U.S. Government.

(e) A military courier or a military route supervisor carried by a military cargo contract air carrier or commercial operator in operations under a military cargo contract, if that carriage is specifically authorized by the appropriate military service.

(f) An authorized representative of the Administrator conducting an en route inspection.

(g) A person, authorized by the Administrator, who is performing a duty connected with a cargo operation of the certificate holder.

§ 135.87 Carriage of cargo including carry-on baggage.

No person may carry cargo, including carry-on baggage, in or on any aircraft unless—

(a) It is carried in an approved cargo rack, bin, or compartment installed in or on the aircraft;

(b) It is secured by an approved means; or

(c) It is carried in accordance with each of the following:

(1) For cargo, it is properly secured by a safety belt or other tie-down having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions, or for carry-on baggage, it is restrained so as to prevent its movement during air turbulence.

(2) It is packaged or covered to avoid possible injury to occupants.

(3) It does not impose any load on seats or on the floor structure that exceeds the load limitation for those components.

(4) It is not located in a position that obstructs the access to, or use of, any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment, or located in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passengers is provided.

(5) It is not carried directly above seated occupants.

(6) It is stowed in compliance with this section for takeoff and landing.

(7) For cargo only operations, paragraph (c)(4) of this section does not apply if the cargo is loaded so that at least one emergency or regular exit is available to provide all occupants of the aircraft a means of unobstructed exit from the aircraft if an emergency occurs.

(d) Each passenger seat under which baggage is stowed shall be fitted with a means to prevent articles of baggage stowed under it from sliding under crash impacts severe enough to induce the ultimate inertia forces specified in the emergency landing condition regulations under which the aircraft was type certificated.

(e) When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

§ 135.89 Pilot requirements: Use of oxygen.

(a) *Unpressurized aircraft.* Each pilot of an unpressurized aircraft shall use oxygen continuously when flying—

(1) At altitudes above 10,000 feet through 12,000 feet MSL for that part of the flight at those altitudes that is of more than 30 minutes duration; and

(2) Above 12,000 feet MSL.

(b) *Pressurized aircraft.*

(1) Whenever a pressurized aircraft is operated with the cabin pressure altitude more than 10,000 feet MSL, each pilot shall comply with paragraph (a) of this section.

(2) Whenever a pressurized aircraft is operated at altitudes above 25,000 feet through 35,000 feet MSL, unless each pilot has an approved quick-donning type oxygen mask—

(i) At least one pilot at the controls shall wear, secured and sealed, an oxygen mask that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude exceeds 12,000 feet MSL; and

(ii) During that flight, each other pilot on flight deck duty shall have an oxygen mask, connected to an oxygen supply, located so as to allow immediate placing of the mask on the pilot's face sealed and secured for use.

(3) Whenever a pressurized aircraft is operated at altitudes above 35,000 feet MSL, at least one pilot at the controls shall wear, secured and sealed, an oxygen mask required by paragraph (2)(i) of this paragraph.

(4) If one pilot leaves a pilot duty station of an aircraft when operating at altitudes above 25,000 feet MSL, the remaining pilot at the controls shall put on and use an approved oxygen mask until the other pilot returns to the pilot duty station of the aircraft.

§ 135.91 Oxygen for medical use by passengers.

(a) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may allow the carriage or operation of equipment for the storage, generation or dispensing of medical oxygen unless the unit to be carried is constructed so that all valves, fittings, and gauges are protected from damage during that carriage or operation and unless the following conditions are met—

(1) The equipment must be—

(i) Of an approved type or in conformity with the manufacturing, packaging, marking, labeling, and maintenance requirements of Title 49 CFR Parts 171, 172, and 173, except § 173.24(a)(1);

(ii) When owned by the certificate holder, maintained under the certificate holder's approved maintenance program;

(iii) Free of flammable contaminants on all exterior surfaces; and

(iv) Appropriately secured.

(2) When the oxygen is stored in the form of a liquid, the equipment must have been under the certificate holder's approved maintenance program since its purchase new or since the storage container was last purged.

(3) When the oxygen is stored in the form of a compressed gas as defined in Title 49 CFR § 173.300(a)—

(i) When owned by the certificate holder, it must be maintained under its approved maintenance program; and

(ii) The pressure in any oxygen cylinder must not exceed the rated cylinder pressure.

(4) The pilot in command must be advised when the equipment is on board, and when it is intended to be used.

(5) The equipment must be stowed, and each person using the equipment must be seated, so as not to restrict access to or use of any required emergency or regular exit, or of the aisle in the passenger compartment.

(b) No person may smoke and no certificate holder may allow any person to smoke within 10 feet of oxygen storage and dispensing equipment carried under paragraph (a) of this section.

(c) No certificate holder may allow any person other than a person trained in the use of medical oxygen equipment to connect or disconnect oxygen bottles or any other ancillary component while any passenger is aboard the aircraft.

(d) Paragraph (a)(1)(i) of this section does not apply when that equipment is furnished by a professional or medical emergency service for use on board an aircraft in a medical emergency when no other practical means of transportation (including any other properly equipped certificate holder) is reasonably available and the person carried under the medical emergency is accompanied by a person trained in the use of medical oxygen.

(e) Each certificate holder who, under the authority of paragraph (d) of this section, deviates from paragraph (a)(1)(i) of this section under a medical emergency shall, within 10 days, excluding Saturdays, Sundays, and Federal holidays, after the deviation, send to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder a complete report of the operation involved, including a description of the deviation and the reasons for it.

§ 135.93 Autopilot: minimum altitudes for use.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, no person may use an autopilot at an altitude above the terrain which is less than 500 feet or less than twice the maximum altitude loss specified in the approved Aircraft Flight Manual or equivalent for a malfunction of the autopilot, whichever is higher.

(b) When using an instrument approach facility other than ILS, no person may use an autopilot at an altitude above the terrain that is less than 50 feet below the approved minimum descent altitude for that procedure, or less than twice the maximum loss specified in the approved Airplane Flight Manual or equivalent for a malfunction of the autopilot under approach conditions, whichever is higher.

(c) For ILS approaches, when reported weather conditions are less than the basic weather conditions in § 91.105 of this chapter, no person may use an autopilot with an approach coupler at an altitude above the terrain that is less than 50 feet above the terrain, or the maximum altitude loss specified in the approved Airplane Flight Manual or equivalent for the malfunction of the autopilot with approach coupler, whichever is higher.

(d) Without regard to paragraphs (a), (b), or (c) of this section, the Administrator may issue operations specifications to allow the use, to touchdown, of an approved flight control guidance system with automatic capability, if—

(1) The system does not contain any altitude loss (above zero) specified in the approved Aircraft Flight Manual or equivalent for malfunction of the autopilot with approach coupler; and

(2) The Administrator finds that the use of the system to touchdown will not otherwise adversely affect the safety standards of this section.

(e) This section does not apply to operations conducted in rotorcraft.

§ 135.95 Airmen: limitations on use of services.

No certificate holder may use the services of any person as an airman unless the person performing those services—

(a) Holds an appropriate and current airman certificate; and

(b) Is qualified, under this chapter, for the operation for which the person is to be used.

§ 135.97 Aircraft and facilities for recent flight experience.

Each certificate holder shall provide aircraft and facilities to enable each of its pilots to maintain and demonstrate the pilot's ability to conduct all operations for which the pilot is authorized.

§ 135.99 Composition of flight crew.

(a) No certificate holder may operate an aircraft with less than the minimum flight crew specified in the aircraft operating limitations or the Aircraft Flight Manual for that aircraft and required by this part for the kind of operation being conducted.

(b) No certificate holder may operate an aircraft without a second in command if that aircraft has a passenger seating configuration, excluding any pilot seat, of ten seats or more.

§ 135.101 Second in command required in IFR conditions.

Except as provided in §§ 135.103 and 135.105, no person may operate an aircraft carrying passengers in IFR conditions, unless there is a second in command in the aircraft.

§ 135.103 Exception to second in command requirement: IFR operations.

The pilot in command of an aircraft carrying passengers may conduct IFR operations without a second in command under the following conditions:

(a) A takeoff may be conducted under IFR conditions if the weather reports or forecasts, or any combination of them, indicate that the weather along the planned route of flight allows flight under VFR within 15 minutes flying time, at normal cruise speed, from the takeoff airport.

(b) En route IFR may be conducted if unforecast weather conditions below the VFR minimums of this chapter are encountered on a flight that was planned to be conducted under VFR.

(c) An IFR approach may be conducted if, upon arrival at the destination airport, unforecast weather conditions do not allow an approach to be completed under VFR.

(d) When IFR operations are conducted under this section:

(1) The aircraft must be properly equipped for IFR operations under this part.

(2) The pilot must be authorized to conduct IFR operations under this part.

(3) The flight must be conducted in accordance with an ATC IFR clearance.

IFR operations without a second in command may not be conducted under this section in an aircraft requiring a second in command under § 135.99.

§ 135.105 Exception to second in command requirement: approval for use of autopilot system.

(a) Except as provided in §§ 135.99 and 135.111, unless two pilots are required by this chapter for operations under VFR, a person may operate an aircraft without a second in command if it is equipped with an operative approved autopilot system and the use of that system is authorized by appropriate operations specifications.

(b) The certificate holder may apply for an amendment of its operations

specifications to authorize the use of an autopilot system in place of a second in command.

(c) The Administrator issues an amendment to the operations specifications authorizing the use of an autopilot system, in place of a second in command, if—

(1) The autopilot is capable of operating the aircraft controls to maintain flight and maneuver it about the three axes; and

(2) The certificate holder shows, to the satisfaction of the Administrator, that operations using the autopilot system can be conducted safely and in compliance with this part.

The amendment contains any conditions or limitations on the use of the autopilot system that the Administrator determines are needed in the interest of safety.

§ 135.107 Flight attendant crewmember requirement.

No certificate holder may operate an aircraft that has a passenger seating configuration, excluding any pilot seat, of more than 19 unless there is a flight attendant crewmember on board the aircraft.

§ 135.109 Pilot in command or second in command: designation required.

(a) Each certificate holder shall designate a—

(1) Pilot in command for each flight; and

(2) Second in command for each flight requiring two pilots.

(b) The pilot in command, as designated by the certificate holder, shall remain the pilot in command at all times during that flight.

§ 135.111 Second in command required in Category II operations.

No person may operate an aircraft in a Category II operation unless there is a second in command of the aircraft.

§ 135.113 Passenger occupancy of pilot seat.

No certificate holder may operate an aircraft type certificated after October 15, 1971, that has a passenger seating configuration, excluding any pilot seat, of more than eight seats if any person other than the pilot in command, a second in command, a company check airman, or an authorized representative of the Administrator, the National Transportation Safety Board, or the United States Postal Service occupies a pilot seat.

§ 135.115 Manipulation of controls.

No pilot in command may allow any person to manipulate the flight controls of an aircraft during flight conducted under this part, nor may any person manipulate the controls during such flight unless that person is—

(a) A pilot employed by the certificate holder and qualified in the aircraft; or

(b) An authorized safety representative of the Administrator who has the permission of the pilot in command, is qualified in the aircraft, and is checking flight operations.

§ 135.117 Briefing of passengers before flight.

(a) Before each takeoff each pilot in command of an aircraft carrying passengers shall ensure that all passengers have been orally briefed on—

(1) Smoking;

(2) Use of seat belts;

(3) The placement of seat backs in an upright position before takeoff and landing;

(4) Location and means for opening the passenger entry door and emergency exits;

(5) Location of survival equipment;

(6) If the flight involves extended overwater operation, ditching procedures and the use of required flotation equipment;

(7) If the flight involves operations above 12,000 feet MSL, the normal and emergency use of oxygen; and

(8) Location and operation of fire extinguishers.

(b) Before each takeoff the pilot in command shall ensure that each person who may need the assistance of another person to move expeditiously to an exit if an emergency occurs and that person's attendant, if any, has received a briefing as to the procedures to be followed if an evacuation occurs. This paragraph does not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft.

(c) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a member of the crew. It shall be supplemented by printed cards for the use of each passenger containing—

(1) A diagram of, and method of operating the emergency exits; and

(2) Other instructions necessary for the use of emergency equipment on board the aircraft.

Each card used under this paragraph must be carried in the aircraft in locations convenient for the use of each passenger and must contain information that is appropriate to the aircraft on which it is to be used.

§ 135.119 Prohibition against carriage of weapons.

No person may, while on board an aircraft being operated by a certificate holder, carry on or about that person a deadly or dangerous weapon, either concealed or unconcealed. This section does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(b) Crewmembers and other persons authorized by the certificate holder to carry arms.

§ 135.121 Alcoholic beverages.

(a) No person may drink any alcoholic beverage aboard an aircraft unless the certificate holder operating the aircraft has served that beverage.

(b) No certificate holder may serve any alcoholic beverage to any person aboard its aircraft if that person appears to be intoxicated.

(c) No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated.

§ 135.123 Emergency and emergency evacuation duties.

(a) Each certificate holder shall assign to each required crewmember for each type of aircraft as appropriate, the necessary functions to be performed in an emergency or in a situation requiring emergency evacuation. The certificate holder shall ensure that those functions can be practicably accomplished, and will meet any reasonably anticipated emergency including incapacitation of individual crewmembers or their inability to reach the passenger cabin because of shifting cargo in combination cargo-passenger aircraft.

(b) The certificate holder shall describe in the manual required under § 135.21 the functions of each category of required crewmembers assigned under paragraph (a) of this section.

Subpart C—Aircraft and Equipment

§ 135.141 Applicability.

This subpart prescribes aircraft and equipment requirements for operations under this part. The requirements of this subpart are in addition to the aircraft and equipment requirements of Part 91 of this chapter. However, this part does not require the duplication of any equipment required by this chapter.

§ 135.143 General requirements.

(a) No person may operate an aircraft under this part unless that aircraft and its equipment meet the applicable regulations of this chapter.

(b) Except as provided in § 135.179, no person may operate an aircraft under this part unless the required instruments and equipment in it have been approved and are in an operable condition.

(c) ATC transponder equipment must meet the performance and environmental requirements of any Class of Technical Standard Order (TSO) C74b, or Class 1A or Class 1B of TSO-74c, as appropriate, except that the

Administrator may approve the use of TSO-C74 or TSO-C74a equipment if the applicant submits data showing that the equipment meets the minimum performance standards of Class 1A or Class 1B of TSO-C74c, and the environmental conditions of the TSO under which it was manufactured.

§ 135.145 Aircraft proving tests.

(a) No certificate holder may operate a turbojet airplane, or an aircraft for which two pilots are required by this chapter for operations under VFR, if it has not previously proved that aircraft or an aircraft of the same make and similar design in any operation under this part unless, in addition to the aircraft certification tests, at least 25 hours of proving tests acceptable to the Administrator have been flown by that certificate holder including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual instrument weather conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of en route airports as determined by the Administrator.

(b) No certificate holder may carry passengers in an aircraft during proving tests, except those needed to make the tests and those designated by the Administrator to observe the tests. However, pilot flight training may be conducted during the proving tests.

(c) For the purposes of paragraph (a) of this section, an aircraft is not considered to be of similar design if an alteration includes—

(1) The installation of powerplants other than those of a type similar to those with which it is certificated; or

(2) Alterations to the aircraft or its components that materially affect flight characteristics.

(d) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

§ 135.147 Dual controls required.

No person may operate an aircraft in operations requiring two pilots unless it is equipped with functioning dual controls. However, if the aircraft type certification operating limitations do not require two pilots, a throwover control wheel may be used in place of two control wheels.

§ 135.149 Equipment requirements: general.

No person may operate an aircraft unless it is equipped with—

(a) A sensitive altimeter that is adjustable for barometric pressure;

(b) Heating or deicing equipment for each carburetor or, for a pressure carburetor, an alternate air source;

(c) For turbojet airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third indicator that—

(1) Is powered from a source independent of the aircraft's electrical generating system;

(2) Continues reliable operation for at least 30 minutes after total failure of the aircraft's electrical generating system;

(3) Operates independently of any other attitude indicating system;

(4) Is operative without selection after total failure of the aircraft's electrical generating system;

(5) Is located on the instrument panel in a position that will make it plainly visible to, and useable by, any pilot at the pilot's station; and

(6) Is appropriately lighted during all phases of operation;

(d) For aircraft having a passenger seating configuration, excluding any pilot seat, of more than 19, a public address system and a crewmember interphone system, approved under § 21.205 of this chapter, which meet §§ 121.318 and 121.319, respectively, of this chapter; and

(e) For turbine powered aircraft, any other equipment as the Administrator may require.

§ 135.151 Cockpit voice recorders.

(a) No person may operate a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, unless it is equipped with an approved cockpit voice recorder that—

(1) Is installed in compliance with Part 25 of this chapter;

(2) Is installed and operated continuously from the use of the check list before the flight to completion of the final check at the end of the flight; and

(3) Has erasure features that may be used so that any time during the operation of the recorder, information recorded more than 30 minutes earlier may be erased or otherwise obliterated.

(b) In the event of an accident, or occurrence requiring immediate notification of the National Transportation Safety Board which results in termination of the flight, the certificate holder shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record may be used to assist in determining the cause of accidents or occurrences in connection with investigations. The Administrator does not use the record in any civil penalty or certificate action.

§ 135.153 Ground proximity warning system.

No person may operate a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, unless it is equipped with—

(a) A ground proximity warning system that meets § 37.201 of this chapter; or

(b) A system that conveys warnings of excessive closure rates with the terrain and any deviations below glide slope by visual and audible means. This system must—

(1) Be approved by the Director, Flight Standards Service; and

(2) Have a means of alerting the pilot when a malfunction occurs in the system.

(c) For the system required by this section, the Airplane Flight Manual shall contain—

(1) Appropriate procedures for—

(i) The use of the equipment;

(ii) Proper flight crew action with respect to the equipment; and

(iii) Deactivation for planned abnormal and emergency conditions; and

(2) An outline of all input sources that must be operating.

(d) No person may deactivate a system required by this section except under procedures in the Airplane Flight Manual.

(e) Whenever a system required by this section is deactivated, an entry shall be made in the airplane maintenance record that includes the date and time of deactivation.

(f) For a system required by paragraph (b) of this section, procedures acceptable to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder shall be established by the certificate holder to ensure that the performance of the system can be appropriately monitored.

§ 135.155 Fire extinguishers: passenger-carrying aircraft.

No person may operate an aircraft carrying passengers unless it is equipped with hand fire extinguishers of an approved type for use in crew and passenger compartments as follows—

(a) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur;

(b) At least one hand fire extinguisher must be provided and conveniently located on the flight deck for use by the flight crew; and

(c) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each aircraft having a passenger seating configuration, excluding any pilot seat, of at least 10 seats but less than 31 seats.

§ 135.157 Oxygen equipment requirements.

(a) *Unpressurized aircraft.* No person may operate an unpressurized aircraft at altitudes prescribed in this section unless it is equipped with enough oxygen dispensers and oxygen to supply the pilots under § 135.89(a) and to supply, when flying—

(1) At altitudes above 10,000 feet through 15,000 feet MSL, oxygen to at least 10 percent of the occupants of the aircraft, other than the pilots, for that part of the flight at those altitudes that is of more than 30 minutes duration; and

(2) Above 15,000 feet MSL, oxygen to each occupant of the aircraft other than the pilots.

(b) *Pressurized aircraft.* No person may operate a pressurized aircraft—

(1) At altitudes above 25,000 feet MSL, unless at least a 10-minute supply of supplemental oxygen is available for each occupant of the aircraft, other than the pilots, for use when a descent is necessary due to loss of cabin pressurization; and

(2) Unless it is equipped with enough oxygen dispensers and oxygen to comply with paragraph (a) of this section whenever the cabin pressure altitude exceeds 10,000 feet MSL and, if the cabin pressurization fails, to comply with § 135.89 (a) or to provide a 2-hour supply for each pilot, whichever is greater, and to supply when flying—

(i) At altitudes above 10,000 feet through 15,000 feet MSL, oxygen to at least 10 percent of the occupants of the aircraft, other than the pilots, for that part of the flight at those altitudes that is of more than 30 minutes duration; and

(ii) Above 15,000 feet MSL, oxygen to each occupant of the aircraft, other than the pilots, for one hour unless, at all times during flight above that altitude, the aircraft can safely descend to 15,000 feet MSL within four minutes, in which case only a 30-minute supply is required.

(c) The equipment required by this section must have a means—

(1) To enable the pilots to readily determine, in flight, the amount of oxygen available in each source of supply and whether the oxygen is being delivered to the dispensing units; or

(2) In the case of individual dispensing units, to enable each user to make those determinations with respect to that person's oxygen supply and delivery; and

(3) To allow the pilots to use undiluted oxygen at their discretion at altitudes above 25,000 feet MSL.

§ 135.159 Equipment requirements: carrying passengers under VFR at night or under VFR over-the-top conditions.

No person may operate an aircraft carrying passengers under VFR at night or under VFR over-the-top, unless it is equipped with—

(a) A gyroscopic rate-of-turn indicator combined with a slip-skid indicator;

(b) A gyroscopic bank-and-pitch indicator;

(c) A gyroscopic direction indicator;

(d) A generator or generators able to supply all probable combinations of continuous inflight electrical loads for required equipment and for recharging the battery; and

(e) For night flights—

(1) An anticollision light system;

(2) Instrument lights to make all instruments, switches, and gauges easily readable, the direct rays of which are shielded from the pilot's eyes; and

(3) A flashlight having at least two size "D" cells or equivalent.

(f) For the purposes of paragraph (d) of this section, a continuous inflight electrical load includes one that draws current continuously during flight, such as radio equipment, electrically driven instruments and lights, but does not include occasional intermittent loads.

§ 135.161 Radio and navigational equipment: carrying passengers under VFR at night or under VFR over-the-top.

(a) No person may operate an aircraft carrying passengers under VFR at night, or under VFR over-the-top, unless it has two-way radio communications equipment able, at least in flight, to transmit to, and receive from, ground facilities 25 miles away.

(b) No person may operate an aircraft carrying passengers under VFR over-the-top unless it has radio navigational equipment able to receive radio signals from the ground facilities to be used.

(c) No person may operate an airplane carrying passengers under VFR at night unless it has radio navigational equipment able to receive radio signals from the ground facilities to be used.

§ 135.163 Equipment requirements: aircraft carrying passengers under IFR.

No person may operate an aircraft under IFR, carrying passengers, unless it has—

(a) A vertical speed indicator;

(b) A free-air temperature indicator;

(c) A heated pitot tube for each airspeed indicator;

(d) A power failure warning device or vacuum indicator to show the power available for gyroscopic instruments from each power source;

(e) An alternate source of static pressure for the altimeter and the airspeed and vertical speed indicators;

(f) For a single-engine aircraft, a generator or generators able to supply all probable combinations of continuous inflight electrical loads for required equipment and for recharging the battery;

(g) For multiengine aircraft, at least two generators each of which is on a separate engine, of which any combination of one-half of the total number are rated sufficiently to supply the electrical loads of all required instruments and equipment necessary for safe emergency operation of the aircraft except that for multiengine helicopters, the two required generators may be mounted on the main rotor drive train; and

(h) Two independent sources of energy (with means of selecting either), of which at least one is an engine-driven pump or generator, each of which is able to drive all gyroscopic instruments and installed so that failure of one instrument or source does not interfere with the energy supply to the remaining instruments or the other energy source, unless, for single-engine aircraft, the rate-of-turn indicator has a source of energy separate from the bank and pitch and direction indicators. For the purpose of this paragraph, for multiengine aircraft, each engine-driven source of energy must be on a different engine.

(i) For the purpose of paragraph (f) of this section, a continuous inflight electrical load includes one that draws current continuously during flight, such as radio equipment, electrically driven instruments, and lights, but does not include occasional intermittent loads.

§ 135.165 Radio and navigational equipment: extended overwater or IFR operations.

(a) No person may operate a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane carrying passengers as a "Commuter Air Carrier" as defined in Part 298 of this title, under IFR or in extended overwater operations unless it has at least the following radio communication and navigational equipment appropriate to the facilities to be used which are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility:

(1) Two transmitters, (2) two microphones, (3) two headsets or one headset and one speaker, (4) a marker beacon receiver, (5) two independent receivers for navigation, and (6) two independent receivers for communications.

(b) No person may operate an aircraft other than that specified in paragraph (a) of this section, under IFR or in extended overwater operations unless it has at least the following radio communication and navigational equipment appropriate to the facilities to be used and which are capable of transmitting to, and receiving from, at any place on the route, at least one ground facility:

(1) A transmitter, (2) two microphones, (3) two headsets or one headset and one speaker, (4) a marker beacon receiver, (5) two independent receivers for navigation, (6) two independent receivers for communications, and (7) for extended overwater operations only, an additional transmitter.

(c) For the purpose of paragraphs (a)(5), (a)(6), (b)(5), and (b)(6) of this section, a receiver is independent if the function of any part of it does not depend on the functioning of any part of another receiver. However, a receiver that can receive both communications and navigational signals may be used in place of a separate communications receiver and a separate navigational signal receiver.

§ 135.167 Emergency equipment: extended overwater operations.

(a) No person may operate an aircraft in extended overwater operations unless it carries, installed in conspicuously marked locations easily accessible to the occupants if a ditching occurs, the following equipment:

(1) An approved life preserver equipped with an approved survivor locator light, or an approved flotation means, for each occupant of the aircraft. The life preserver or other flotation means must be easily accessible to each seated occupant. If a flotation means other than a life preserver is used, it must be readily removable from the aircraft.

(2) Enough life rafts (with proper buoyancy) to carry all occupants of the aircraft, and at least the following equipment for each raft clearly marked for easy identification—

(i) One canopy (for sail, sunshade, or rain catcher);

(ii) One radar reflector (or similar device);

(iii) One life raft repair kit;

(iv) One bailing bucket;

(v) One signaling mirror;

(vi) One police whistle;

(vii) One raft knife;

(viii) One CO_2 bottle for emergency inflation;

(ix) One inflation pump;

(x) Two oars;

(xi) One 75-foot retaining line;

(xii) One magnetic compass;

(xiii) One dye marker;

(xiv) One flashlight having at least two size "D" cells or equivalent;

(xv) At least one approved pyrotechnic signaling device;

(xvi) A two-day supply of emergency food rations supplying at least 1,000 calories a day for each person;

(xvii) One sea water desalting kit for each two persons the raft is rated to carry, or two pints of water for each person the raft is rated to carry;

(xviii) One fishing kit; and

(xix) One book on survival appropriate for the area in which the aircraft is operated.

(b) No person may operate an aircraft in extended overwater operations unless there is attached to one of the life rafts required by paragraph (a) of this section, a survival type emergency locator transmitter that meets § 37.200 of this chapter. Batteries used in this transmitter must be replaced (or recharged, if the battery is rechargeable) when the transmitter has been in use for more than 1 cumulative hour, and also when 50 percent of their useful life (or for rechargeable batteries, 50 percent of their useful life of charge), as established by the transmitter manufacturer under § 37.200(g)(2) of this chapter, has expired. The new expiration date for the replacement or recharged battery must be legibly marked on the outside of the transmitter. The battery useful life or useful life of charge requirements of this paragraph do not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

§ 135.169 Additional airworthiness requirements.

(a) No person may operate a large airplane unless it meets the additional airworthiness requirements of §§ 121.213 through 121.283 and 121.307 and 121.312 of this chapter.

(b) No person may operate a reciprocating engine or turbopropeller-powered small airplane that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more unless it is type certificated—

(1) In the transport category;

(2) Before July 1, 1970, in the normal category and meets special conditions issued by the Administrator for airplanes intended for use in operations under this part;

(3) Before July 19, 1970, in the normal category and meets the additional airworthiness standards in Special Federal Aviation Regulation No. 23; or

(4) In the normal category and meets the additional airworthiness standards in Appendix A.

(c) No person may operate a small airplane with a passenger seating configuration, excluding any pilot seat, of 10 seats or more, with a seating configuration greater than the maximum seating configuration used in that type airplane in operations under this part before August 19, 1977. This paragraph does not apply to—

(1) An airplane that is type certificated in the transport category; or

(2) An airplane that complies with Appendix A if its passenger seating configuration, excluding any pilot seat, is not more than 19.

§ 135.171 Shoulder harness installation at flight crewmember stations.

(a) No person may operate a turbojet aircraft or an aircraft having a passenger seating configuration, excluding any pilot seat, of 10 seats or more unless it is equipped with an approved shoulder harness installed for each flight crewmember station.

(b) Each flight crewmember occupying a station equipped with a shoulder harness must fasten the shoulder harness during takeoff and landing, except that the shoulder harness may be unfastened if the crewmember cannot perform the required duties with the shoulder harness fastened.

§ 135.173 Airborne thunderstorm detection equipment requirements.

(a) No person may operate a multiengine small aircraft that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations unless approved thunderstorm detection equipment is installed in the aircraft.

(b) No person may begin a flight under IFR or night VFR conditions when current weather reports indicate that thunderstorms or other potentially hazardous weather conditions that can be detected with airborne thunderstorm detection equipment, required by paragraph (a) of this section, may reasonably be expected along the route to be flown, unless the airborne thunderstorm detection equipment is in satisfactory operating condition.

(c) If the airborne thunderstorm detection equipment becomes inoperative en route, the aircraft must be operated under the instructions and procedures specified for that event in the manual required by § 135.21.

(d) This section does not apply to aircraft used solely within the State of Hawaii, within the State of Alaska, within that part of Canada west of longitude 130 degrees W, between latitude 70 degrees N, and latitude 53 degrees N, or during any training, test, or ferry flight.

(e) Without regard to any other provision of this part, an alternate electrical power supply is not required for airborne thunderstorm detection equipment.

§ 135.175 Airborne weather radar equipment requirements.

(a) No person may operate a large, transport category aircraft in passenger-carrying operations unless approved airborne weather radar equipment is installed in the aircraft.

(b) No person may begin a flight under IFR or night VFR conditions when current weather reports indicate that thunderstorms, or other potentially hazardous weather conditions that can be detected with airborne weather radar equipment, may reasonably be expected along the route to be flown, unless the airborne weather radar equipment required by paragraph (a) of this section is in satisfactory operating condition.

(c) If the airborne weather radar equipment becomes inoperative en route, the aircraft must be operated under the instructions and procedures specified for that event in the manual required by § 135.21.

(d) This section does not apply to aircraft used solely within the State of Hawaii, within the State of Alaska, within that part of Canada west of longitude 130 degrees W, between latitude 70 degrees N, and latitude 53 degrees N, or during any training, test, or ferry flight.

(e) Without regard to any other provision of this part, an alternate electrical power supply is not required for airborne weather radar equipment.

§ 135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.

(a) No person may operate an aircraft having a passenger seating configuration, excluding any pilot seat, of more than 19 seats unless it is equipped with the following emergency equipment:

(1) One approved first aid kit for treatment of injuries likely to occur in flight or in a minor accident, which meets the following specifications and requirements:

(i) Each first aid kit must be dust and moisture proof, and contain only materials that either meet Federal Specifications GGK-319a, as revised, or as approved by the Administrator.

(ii) Required first aid kits must be readily accessible to the cabin flight attendants.

(iii) At time of takeoff, each first aid kit must contain at least the following or other contents approved by the Administrator:

Contents:	*Quantity*
Adhesive bandage compressors, 1 in	16
Antiseptic swabs	20
Ammonia inhalents	10
Bandage compressors, 4 in	8
Triangular bandage compressors, 40 in	5
Burn compound, ⅛ oz or an equivalent of other burn remedy	6
Arm splint, noninflatable	1
Leg splint, noninflatable	1
Roller bandage, 4 in	4
Adhesive tape, 1-in standard roll	2
Bandage scissors	1

(2) A crash axe carried so as to be accessible to the crew but inaccessible to passengers during normal operations.

(3) Signs that are visible to all occupants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that they can be turned on and off by a crewmember. They must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(4) For airplanes, has the additional emergency equipment specified in § 121.310 of this chapter.

(b) Each item of equipment must be inspected regularly under inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes.

§ 135.179 Inoperable instruments and equipment for multiengine aircraft.

(a) No person may take off a multiengine aircraft unless the following instruments and equipment are in an operable condition:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive to be in operable condition unless the airworthiness directive provides otherwise.

(b) No person may take off any multiengine aircraft with inoperable instruments or equipment installed, other than those described in paragraph (a) of this section, unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the aircraft type.

(2) The aircraft has within it a letter of authorization, issued by the FAA Flight Standards District Office having certification responsibility for the certificate holder, authorizing operation of the aircraft under the Minimum Equipment List. The letter of authorization may be obtained by written request of the certificate holder. The Minimum Equipment List and the letter of authorization constitute a supplemental type certificate for the aircraft.

(3) The approved Minimum Equipment List must provide for the operation of the aircraft with the instruments and equipment in an inoperable condition.

(4) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the letter authorizing the use of the list.

(c) Without regard to the requirements of paragraph (a)(1) of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

§ 135.181 Performance requirements: aircraft operated over-the-top or in IFR conditions.

(a) Except as provided in paragraphs (b) and (c) of this section, no person may—

(1) Operate a single-engine aircraft carrying passengers over-the-top or in IFR conditions; or

(2) Operate a multiengine aircraft carrying passengers over-the-top or in IFR conditions at a weight that will not allow it to climb, with the critical engine inoperative, at least 50 feet a minute when operating at the MEAs of the route to be flown or 5,000 feet MSL, whichever is higher.

(b) Without regard to paragraph (a) of this section—

(1) If the latest weather reports or forecasts, or any combination of them, indicate that the weather along the planned route (including takeoff and landing) allows flight under VFR under the ceiling (if a ceiling exists) and that the weather is forecast to remain so until at least 1 hour after the estimated time of arrival at the destination, a person may operate an aircraft over-the-top; or

(2) If the latest weather reports or forecasts, or any combination of them, indicate that the weather along the planned route allows flight under VFR under the ceiling (if a ceiling exists) beginning at a point no more than 15 minutes flying time at normal cruise speed from the departure airport, a person may—

(i) Take off from the departure airport in IFR conditions and fly in IFR conditions to a point no more than 15 minutes flying time at normal cruise speed from that airport;

(ii) Operate an aircraft in IFR conditions if unforecast weather conditions are encountered while en route on a flight planned to be conducted under VFR; and

(iii) Make an IFR approach at the destination airport if unforecast weather conditions are encountered at the airport that do not allow an approach to be completed under VFR.

(c) Without regard to paragraph (a) of this section, a person may operate

an aircraft over-the-top under conditions allowing—

(1) For multiengine aircraft, descent or continuance of the flight under VFR if its critical engine fails; or

(2) For single-engine aircraft, descent under VFR if its engine fails.

§ 135.183 Performance requirements: land aircraft operated over water.

No person may operate a land aircraft carrying passengers over water unless—

(a) It is operated at an altitude that allows it to reach land in the case of engine failure;

(b) It is necessary for takeoff or landing;

(c) It is a multiengine aircraft operated at a weight that will allow it to climb, with the critical engine inoperative, at least 50 feet a minute, at an altitude of 1,000 feet above the surface; or

(d) It is a helicopter equipped with helicopter flotation devices.

§ 135.185 Empty weight and center of gravity: currency requirement.

(a) No person may operate a multiengine aircraft unless the current empty weight and center of gravity are calculated from values established by actual weighing of the aircraft within the preceding 36 calendar months.

(b) Paragraph (a) of this section does not apply to—

(1) Aircraft issued an original airworthiness certificate within the preceding 36 calendar months; and

(2) Aircraft operated under a weight and balance system approved in the operations specifications of the certificate holder.

Subpart D—VFR/IFR Operating Limitations and Weather Requirements

§ 135.201 Applicability.

This subpart prescribes the operating limitations for VFR/IFR flight operations and associated weather requirements for operations under this part.

§ 135.203 VFR: minimum altitudes.

Except when necessary for takeoff and landing, no person may operate under VFR—

(a) An airplane—

(1) During the day, below 500 feet above the surface or less than 500 feet horizontally from any obstacle; or

(2) At night, at an altitude less than 1,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown or, in designated mountainous terrain, less than 2,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown; or

(b) A helicopter over a congested area at an altitude less than 300 feet above the surface.

§ 135.205 VFR: visibility requirements.

(a) No person may operate an airplane under VFR in uncontrolled airspace when the ceiling is less than 1,000 feet unless flight visibility is at least 2 miles.

(b) No person may operate a helicopter under VFR in uncontrolled airspace at an altitude of 1,200 feet or less above the surface or in control zones unless the visibility is at least—

(1) During the day—½ mile; or

(2) At night—1 mile.

§ 135.207 VFR: helicopter surface reference requirements.

No person may operate a helicopter under VFR unless that person has visual surface reference or, at night, visual surface light reference, sufficient to safely control the helicopter.

§ 135.209 VFR: fuel supply.

(a) No person may begin a flight operation in an airplane under VFR unless, considering wind and forecast weather conditions, it has enough fuel to fly to the first point of intended landing and, assuming normal cruising fuel consumption—

(1) During the day, to fly after that for at least 30 minutes; or

(2) At night, to fly after that for at least 45 minutes.

(b) No person may begin a flight operation in a helicopter under VFR unless, considering wind and forecast weather conditions, it has enough fuel to fly to the first point of intended landing and, assuming normal cruising fuel consumption, to fly after that for at least 20 minutes.

§ 135.211 VFR: over-the-top carrying passengers: operating limitations.

Subject to any additional limitations in § 135.181, no person may operate an aircraft under VFR over-the-top carrying passengers, unless—

(a) Weather reports or forecasts, or any combination of them, indicate that the weather at the intended point of termination of over-the-top flight—

(1) Allows descent to beneath the ceiling under VFR and is forecast to remain so until at least 1 hour after the estimated time of arrival at that point; or

(2) Allows an IFR approach and landing with flight clear of the clouds until reaching the prescribed initial approach altitude over the final approach facility, unless the approach is made with the use of radar under § 91.116(f) of this chapter; or

(b) It is operated under conditions allowing—

(1) For multiengine aircraft, descent or continuation of the flight under VFR if its critical engine fails; or

(2) For single-engine aircraft, descent under VFR if its engine fails.

§ 135.213 Weather reports and forecasts.

(a) Whenever a person operating an aircraft under this part is required to use a weather report or forecast, that person shall use that of the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator. However, for operations under VFR, the pilot in command may, if such a report is not available, use weather information based on that pilot's own observations or on those of other persons competent to supply appropriate observations.

(b) For the purposes of paragraph (a) of this section, weather observations made and furnished to pilots to conduct IFR operations at an airport must be taken at the airport where those IFR operations are conducted, unless the Administrator issues operations specifications allowing the use of weather observations taken at a location not at the airport where the IFR operations are conducted. The Administrator issues such operations specifications when, after investigation by the U.S. National Weather Service and the FAA Flight Standards District Office charged with the overall inspection of the certificate holder, it is found that the standards of safety for that operation would allow the deviation from this paragraph for a particular operation for which an ATCO operating certificate has been issued.

§ 135.215 IFR: operating limitations.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, no person may operate an aircraft under IFR outside of controlled airspace or at any airport that does not have an approved standard instrument approach procedure.

(b) The Administrator may issue operations specifications to the certificate holder to allow it to operate under IFR over routes outside controlled airspace if—

(1) The certificate holder shows the Administrator that the flight crew is able to navigate, without visual reference to the ground, over an intended track without deviating more than 5 degrees or 5 miles, whichever is less, from that track; and

(2) The Administrator determines that the proposed operations can be conducted safely.

(c) A person may operate an aircraft under IFR outside of controlled airspace if the certificate holder has been approved for the operations and that operation is necessary to—

(1) Conduct an instrument approach to an airport for which there is in use a current approved standard or special instrument approach procedure; or

(2) Climb into controlled airspace during an approved missed approach procedure; or

(3) Make an IFR departure from an airport having an approved instrument approach procedure.

(d) The Administrator may issue operations specifications to the certificate holder to allow it to depart at an airport that does not have an approved standard instrument approach procedure when the Administrator determines that it is necessary to make an IFR departure from that airport and that the proposed operations can be conducted safely. The approval to operate at that airport does not include an approval to make an IFR approach to that airport.

§ 135.217 IFR: takeoff limitations.

No person may takeoff an aircraft under IFR from an airport where weather conditions are at or above take off minimums but are below authorized IFR landing minimums unless there is an alternate airport within 1 hour's flying time (at normal cruising speed, in still air) of the airport of departure.

§ 135.219 IFR: destination airport weather minimums.

No person may take off an aircraft under IFR or begin an IFR or over-the-top operation unless the latest weather reports or forecasts, or any combination of them, indicate that weather conditions at the estimated time of arrival at the next airport of intended landing will be at or above authorized IFR landing minimums.

§ 135.221 IFR: alternate airport weather minimums.

No person may designate an alternate airport unless the weather reports or forecasts, or any combination of them, indicate that the weather conditions will be at or above authorized alternate airport landing minimums for that airport at the estimated time of arrival.

§ 135.223 IFR: alternate airport requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate an aircraft in IFR conditions unless it carries enough fuel (considering weather reports or forecasts or any combination of them) to—

(1) Complete the flight to the first airport of intended landing;

(2) Fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if Part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing and, for at least one hour before and after the estimated time of arrival, the appropriate weather reports or forecasts, or any combination of them, indicate that—

(1) The ceiling will be at least 1,500 feet above the lowest circling approach MDA; or

(2) If a circling instrument approach is not authorized for the airport, the ceiling will be at least 1,500 feet above the lowest published minimum or 2,000 feet above the airport elevation, whichever is higher; and

(3) Visibility for that airport is forecast to be at least three miles, or two miles more than the lowest applicable visibility minimums, whichever is the greater, for the instrument approach procedure to be used at the destination airport.

§ 135.225 IFR: takeoff, approach and landing minimums.

(a) No pilot may begin an instrument approach procedure to an airport unless—

(1) That airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by that weather reporting facility indicates that weather conditions are at or above the authorized IFR landing minimums for that airport.

(b) No pilot may begin the final approach segment of an instrument approach procedure to an airport unless the latest weather reported by the facility described in paragraph (a)(1) of this section indicates that weather conditions are at or above the authorized IFR landing minimums for that procedure.

(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—

(1) On an ILS final approach and has passed the final approach fix; or

(2) On an ASR or PAR final approach and has been turned over to the final approach controller; or

(3) On a final approach using a VOR, NDB, or comparable approach procedure; and the aircraft—

(i) Has passed the appropriate facility or final approach fix; or

(ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; the approach may be continued and a landing made if the pilot finds, upon reaching the authorized MDA or DH, that actual weather conditions are at least equal to the minimums prescribed for the procedure.

(d) The MDA or DH and visibility landing minimums prescribed in Part 97 of this chapter or in the operator's operations specifications are increased by 100 feet and ½ mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each pilot in command of a turbine-powered airplane who has not served at least 100 hours as pilot in command in that type of airplane.

(e) Each pilot making an IFR takeoff or approach and landing at a military or foreign airport shall comply with applicable instrument approach procedures and weather minimums prescribed by the authority having jurisdiction over that airport. In addition, no pilot may, at that airport—

(1) Take off under IFR when the visibility is less than 1 mile; or

(2) Make an instrument approach when the visibility is less than ½ mile.

(f) If takeoff minimums are specified in Part 97 of this chapter for the takeoff airport, no pilot may take off an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are less than the takeoff minimums specified for the takeoff airport in Part 97 or in the certificate holder's operations specifications.

(g) Except as provided in paragraph (h) of this section, if takeoff minimums are not prescribed in Part 97 of this chapter for the takeoff airport, no pilot may take off an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are less than that prescribed in Part 91 of this chapter or in the certificate holder's operations specifications.

(h) At airports where straight-in instrument approach procedures are authorized, a pilot may take off an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are equal to or better than the lowest straight-in landing minimums, unless otherwise restricted, if—

(1) The wind direction and velocity at the time of takeoff are such that a straight-in instrument approach can be made to the runway served by the instrument approach;

(2) The associated ground facilities upon which the landing minimums are predicated and the related airborne equipment are in normal operation; and

(3) The certificate holder has been approved for such operations.

§ 135.227 Icing conditions: operating limitations.

(a) No pilot may take off an aircraft that has—

(1) Frost, snow, or ice adhering to any rotor blade, propeller, windshield, or powerplant installation, or to an airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) Snow or ice adhering to the wings or stabilizing or control surfaces; or

(3) Any frost adhering to the wings, or stabilizing or control surfaces, unless that frost has been polished to make it smooth.

(b) Except for an airplane that has ice protection provisions that meet § 34 of Appendix A, or those for transport category airplane type certification, no pilot may fly—

(1) Under IFR into known or forecast light or moderate icing conditions; or

(2) Under VFR into known light or moderate icing conditions; unless the aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system.

(c) Except for an airplane that has ice protection provisions that meet § 34 of Appendix A, or those for transport category airplane type certification, no pilot may fly an aircraft into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing condition that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraphs (b) and (c) of this section based on forecast conditions do not apply.

§ 135.229 Airport requirements.

(a) No certificate holder may use any airport unless it is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(b) No pilot of an aircraft carrying passengers at night may take off from, or land on, an airport unless—

(1) That pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(2) The limits of the area to be used for landing or takeoff are clearly shown—

(i) For airplanes, by boundary or runway marker lights;

(ii) For helicopters, by boundary or runway marker lights or reflective material.

(c) For the purpose of paragraph (b) of this section, if the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be approved by the Administrator.

Subpart E—Flight Crewmember Requirements

§ 135.241 Applicability.

This subpart prescribes the flight crewmember requirements for operations under this part.

§ 135.243 Pilot in command qualifications.

(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations of a turbojet airplane, of an airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane being operated by the "Commuter Air Carrier" (as defined in Part 298 of this title), unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

(b) Except as provided in paragraph (a) of this section, no certificate holder may use a person, nor may any person serve, as pilot in command of an aircraft under VFR unless that person—

(1) Holds at least a commercial pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that aircraft; and

(2) Has had at least 500 hours of flight time as a pilot, including at least 1000 hours of cross-country flight time, at least 25 hours of which were at night; and

(3) For an airplane, holds an instrument rating or an airline transport pilot certificate with an airplane category rating; or

(4) For helicopter operations conducted VFR over-the-top, holds a helicopter instrument rating, or an airline transport pilot certificate with a category and class rating for that aircraft, not limited to VFR.

(c) Except as provided in paragraph (a) of this section, no certificate holder may use a person, nor may any person serve, as pilot in command of an aircraft under IFR unless that person—

(1) Holds at least a commercial pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that aircraft; and

(2) Has had at least 1,200 hours of flight time as a pilot, including 500 hours of cross country flight time, 100 hours of night flight time, and 75 hours of actual or simulated instrument time at least 50 hours of which were in actual flight; and

(3) For an airplane, holds an instrument rating or an airline transport pilot certificate with an airplane category rating; or

(4) For a helicopter, holds a helicopter instrument rating, or an airline transport pilot certificate with a category and class rating for that aircraft, not limited to VFR.

§ 135.245 Second in command qualifications.

No certificate holder may use any person, nor may any person serve, as second in command of an aircraft unless that person holds at least a commercial pilot certificate with appropriate category and class ratings and an instrument rating. For flight under IFR that person must meet the recent instrument experience requirements of Part 61 of this chapter.

§ 135.247 Pilot qualifications: recent experience.

(a) No certificate holder may use any person, nor may any person serve, as pilot in command of an aircraft carrying passengers unless, within the preceding 90 days, that person has—

(1) Made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type in which that person is to serve; or

(2) For operation during the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the Air Almanac), made three takeoffs and three landings during that period as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type in which that person is to serve.

A person who complies with paragraph (a)(2) of this paragraph need not comply with paragraph (a)(1) of this paragraph.

(b) For the purpose of paragraph (a) of this section, if the aircraft is a tailwheel airplane, each takeoff must be made in a tailwheel airplane and each landing must be made to a full stop in a tailwheel airplane.

Subpart F—Flight Crewmember Flight and Duty Time Limitations

§ 135.261 Flight and duty time limitations.

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment, for duty during flight time if the total flight time of that flight in addition to any other commercial

flying by that flight crewmember exceeds the following during any 24 consecutive hours:

(1) Eight hours for a flight crew consisting of one pilot.

(2) Ten hours for a flight crew consisting of two pilots required by this chapter.

(b) No certificate holder may assign a flight crewmember, and no flight crewmember may accept an assignment, for duty during flight time unless that assignment provides for at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment.

(c) A flight crewmember is not considered to be assigned for duty during flight time in excess of flight time limitations if the flights to which the flight crewmember is assigned would normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder or the flight crewmember (such as adverse weather conditions) are not at the time of departure expected to reach their destination within the planned flight time.

(d) No certificate holder may assign a flight crewmember, and no flight crewmember may accept an assignment, for duty during flight time if, because of circumstances beyond the control of the certificate holder or flight crewmember, the flight crewmember has exceeded the flight time limitations in paragraph (a) of this section, unless the flight crewmember has had 16 hours of rest since the completion of the flight crewmember's last assigned flight.

(e) Time spent in transportation, not local in character, that the certificate holder requires of a flight crewmember and provides to transport the crewmember to the airport at which the flight crewmember is to serve on a flight as a flight crewmember, or from an airport at which the flight crewmember has completed an assigned flight to the flight crewmember's home station, is not considered part of a rest period.

(f) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment, for duty during flight time if the flight crewmember has been assigned to any duty with the certificate holder in connection with operations under this part during any required rest period.

Subpart G—Crewmember Testing Requirements

§ 135.291 Applicability.

This subpart prescribes the tests and checks required for pilot and flight attendant crewmembers and for the approval of check pilots in operations under this part.

§ 135.293 Initial and recurrent pilot testing requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas—

(1) The appropriate provisions of Parts 61, 91, and 135 of this chapter and the operations specifications and the manual of the certificate holder;

(2) For each type of aircraft to be flown by the pilot, the aircraft powerplant, major components and systems, major appliances, performance and operating limitations, standard and emergency operating procedures, and the contents of the approved Aircraft Flight Manual or equivalent, as applicable;

(3) For each type of aircraft to be flown by the pilot, the method of determining compliance with weight and balance limitations for takeoff, landing and en route operations;

(4) Navigation and use of air navigation aids appropriate to the operation or pilot authorization, including, when applicable, instrument approach facilities and procedures;

(5) Air traffic control procedures, including IFR procedures when applicable;

(6) Meteorology in general, including the principles of frontal systems, icing, fog, thunderstorms, and windshear, and, if appropriate for the operation of the certificate holder, high altitude weather;

(7) Procedures for avoiding operations in thunderstorms and hail, and for operating in turbulent air or in icing conditions; and

(8) New equipment, procedures, or techniques, as appropriate.

(b) No certificate holder may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th calendar month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine airplane other than turbojet, or that type of aircraft, if helicopter, multiengine airplane, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check shall be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph, type, as to an airplane, means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph, type, as to a helicopter, means a basic make and model.

(c) The instrument proficiency check required by § 135.297 may be substituted for the competency check required by this section for the type of aircraft used in the check.

(d) For the purpose of this part, competent performance of a procedure or maneuver by a person to be used as a pilot requires that the pilot be the obvious master of the aircraft, with the successful outcome of the maneuver never in doubt.

(e) The Administrator or authorized check pilot certifies the competency of each pilot who passes the knowledge or flight check in the certificate holder's pilot records.

(f) Portions of a required competency check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 135.295 Initial and recurrent flight attendant crewmember testing requirements.

No certificate holder may use a flight attendant crewmember, nor may any person serve as a flight attendant crewmember unless, since the beginning of the 12th calendar month before that service, the certificate holder has determined by appropriate initial and recurrent testing that the person is knowledgeable and competent in the following areas as appropriate to assigned duties and responsibilities—

(a) Authority of the pilot in command;

(b) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety;

(c) Crewmember assignments, functions, and responsibilities during ditching and evacuation of persons who may need the assistance of another person to move expeditiously to an exit in an emergency;

(d) Briefing of passengers;

(e) Location and operation of portable fire extinguishers and other items of emergency equipment;

(f) Proper use of cabin equipment and controls;

(g) Location and operation of passenger oxygen equipment;

(h) Location and operation of all normal and emergency exits, including evacuation chutes and escape ropes; and

(i) Seating of persons who may need assistance of another person to move rapidly to an exit in an emergency as prescribed by the certificate holder's operations manual.

§ 135.297 Pilot in command: instrument proficiency check requirements.

(a) No certificate holder may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the sixth calendar month before that service, that pilot has passed an instrument proficiency check and the Administrator or an authorized check pilot has so certified in a letter of competency.

(b) No pilot may use any type of instrument approach procedure under IFR unless, since the beginning of the sixth calendar month before that use, the pilot has satisfactorily demonstrated at least one instrument approach procedure using an ILS, a VOR and an NDB facility, and has been issued a letter of competency under paragraph (h) of this section. These instrument approach procedures must include at least one straight-in approach, one circling approach in conjunction with a VOR or an NDB, and one missed approach. Each approach procedure demonstrated must be conducted to the published minimum for that procedure.

(c) The instrument proficiency check required by paragraph (a) of this section consists of an oral or written equipment test and a flight check under simulated or actual IFR conditions. The equipment test includes questions on emergency procedures, engine operation, fuel and lubrication systems, power settings, stall speeds, best engine-out speed, propeller and supercharger operations, and hydraulic, mechanical, and electrical systems, as appropriate. The flight check includes navigation by instruments, recovery from simulated emergencies, and standard instrument approaches involving navigational facilities which that pilot is to be authorized to use. Each pilot taking the instrument proficiency check must show that standard of competence required by § 135.293(d).

(1) The instrument proficiency check must—

(i) For a pilot in command of an airplane under § 135.243(a), include the procedures and maneuvers for an airline transport pilot certificate in the particular type of airplane, if appropriate; and

(ii) For a pilot in command of an airplane or helicopter under § 135.243(c), include the procedures and maneuvers for a commercial pilot certificate with an instrument rating and, if required, for the appropriate type rating.

(2) The instrument proficiency check must be given by an authorized check airman or by the Administrator.

(d) If the pilot in command is assigned to pilot only one type of aircraft, that pilot must take the instrument proficiency check required by paragraph (a) of this section in that type of aircraft.

(e) If the pilot in command is assigned to pilot more than one type of aircraft, that pilot must take the instrument proficiency check required by paragraph (a) of this section in each type of aircraft to which that pilot is assigned, in rotation, but not more than one flight check during each period described in paragraph (a) of this section.

(f) If the pilot in command is assigned to pilot both single-engine and multiengine aircraft, that pilot must initially take the instrument proficiency check required by paragraph (a) of this section in a multiengine aircraft, and each succeeding check alternately in single-engine and multiengine aircraft, but not more than one flight check during each period described in paragraph (a) of this section. Portions of a required flight check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

(g) If the pilot in command is authorized to use an autopilot system in place of a second in command, that pilot must show, during the required instrument proficiency check, that the pilot is able (without a second in command) both with and without using the autopilot to—

(1) Conduct instrument operations competently; and

(2) Properly conduct air-ground communications and comply with complex air traffic control instructions.

(3) Each pilot taking the autopilot check must show that, while using the autopilot, the airplane can be operated as proficiently as it would be if a second in command were present to handle air-ground communications and air traffic control instructions. The autopilot check need only be demonstrated once every 12 calendar months during the instrument proficiency check required under paragraph (a) of this section.

(h) The Administrator or authorized check pilot issues a letter of competency to each pilot who passes the instrument proficiency check. The letter of competency authorizes the use of instrument approach procedures and facilities under Part 97 of this chapter and, if the pilot passes the autopilot check, authorizes the use of an autopilot system in place of a second in command.

§ 135.299 Pilot in command: line checks: routes and airports.

(a) No certificate holder may use a pilot, nor may any person serve, as a pilot in command of a flight unless, since the beginning of the 12th calendar month before that service, that pilot has passed a flight check in one of the types of aircraft which that pilot is to fly. The flight check shall—

(1) Be given by an approved check pilot or by the Administrator;

(2) Consist of at least one flight over one route segment; and

(3) Include takeoffs and landings at one or more representative airports. In addition to the requirements of this paragraph, for a pilot authorized to conduct IFR operations, at least one flight shall be flown over a civil airway, an approved off-airway route, or a portion of either of them.

(b) The pilot who conducts the check shall determine whether the pilot being checked satisfactorily performs the duties and responsibilities of a pilot in command in operations under this part, and shall so certify in the pilot training record.

(c) Each certificate holder shall establish in the manual required by § 135.21 a procedure which will ensure that each pilot who has not flown over a route and into an airport within the preceding 90 days will, before beginning the flight, become familiar with all available information required for the safe operation of that flight.

§ 135.301 Crewmember: tests and checks, grace provisions, training to accepted standards.

(a) If a crewmember who is required to take a test or a flight check under this part, completes the test or flight check in the calendar month before or after the calendar month in which it is required, that crewmember is considered to have completed the test or check in the calendar month in which it is required.

(b) If a pilot being checked under this subpart fails any of the required maneuvers, the person giving the check may give additional training to the pilot during the course of the check. In addition to repeating the maneuvers failed, the person giving the check may require the pilot being checked to repeat any other maneuvers that are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the certificate holder may not use the pilot, nor may the pilot serve, as a flight crewmember in operations under this part until the pilot has satisfactorily completed the check.

§ 135.303 Check pilot authorization: application and issue.

Each certificate holder desiring FAA approval of a check pilot shall submit a request in writing to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder. The Administrator may issue a letter of authority to each check pilot if that pilot passes the appropriate oral and flight test. The letter of authority lists the tests and checks in this part that the check pilot is qualified to give, and the category, class and type aircraft, where appropriate, for which the check pilot is qualified.

Subpart H—Training

§ 135.321 Applicability and terms used.

(a) This subpart prescribes requirements for establishing and maintaining an approved training program for crewmembers, check airmen and instructors, and other operations personnel, and for the approval and use of aircraft simulators and other training devices in the conduct of that program.

(b) For the purposes of this subpart, the following terms and definitions apply:

(1) Initial training. The training required for crewmembers who have not qualified and served in the same capacity on an aircraft.

(2) Transition training. The training required for crewmembers who have qualified and served in the same capacity on another aircraft.

(3) Upgrade training. The training required for crewmembers who have qualified and served as second in command on a particular aircraft type, before they serve as pilot in command on that aircraft.

(4) Differences training. The training required for crewmembers who have qualified and served on a particular type aircraft, when the Administrator finds differences training is necessary before a crewmember serves in the same capacity on a particular variation of that aircraft.

(5) Recurrent training. The training required for crewmembers to remain adequately trained and currently proficient for each aircraft, crewmember position, and type of operation in which the crewmember serves.

(6) In flight. The maneuvers, procedures, or functions that must be conducted in the aircraft.

§ 135.323 Training program: general.

(a) Each certificate holder required to have a training program under § 135.341 shall:

(1) Establish, obtain the appropriate initial and final approval of, and provide a training program that meets this subpart and that ensures that each crewmember, flight instructor, check airman, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform their assigned duties.

(2) Provide adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart.

(3) Provide and keep current for each aircraft type used and, if applicable, the particular variations within the aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this subpart.

(4) Provide enough flight instructors, check airmen, and simulator instructors to conduct required flight training and flight checks, and simulator training courses allowed under this subpart.

(b) Whenever a crewmember who is required to take recurrent training under this subpart completes the training in the calendar month before, or the calendar month after, the month in which that training is required, the crewmember is considered to have completed it in the calendar month in which it was required.

(c) Each instructor, supervisor, or check airman who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this part shall certify as to the proficiency and knowledge of the crewmember, flight instructor, or check airman concerned upon completion of that training or check. That certification shall be made a part of the crewmember's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check airman, must be identified with that entry. However, the signature of the certifying instructor, supervisor, or check airman, is not required for computerized entries.

(d) Training subjects that apply to more than one aircraft or crewmember position and that have been satisfactorily completed during previous training while employed by the certificate holder for another aircraft or another crewmember position, need not be repeated during subsequent training other than recurrent training.

(e) Aircraft simulators and other training devices may be used in the certificate holder's training program if approved by the Administrator.

§ 135.325 Training program and revision: initial and final approval.

(a) To obtain initial and final approval of a training program, or a revision to an approved training program, each certificate holder must submit to the Administrator—

(1) An outline of the proposed or revised curriculum, that provides enough information for a preliminary evaluation of the proposed training program or revision; and

(2) Additional relevant information that may be requested by the Administrator.

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in writing after which the certificate holder may conduct the training under that program. The Administrator then evaluates the effectiveness of the training program and advises the certificate holder of deficiencies, if any, that must be corrected.

(c) The Administrator grants final approval of the proposed training program or revision if the certificate holder shows that the training conducted under the initial approval in paragraph (b) of this section ensures that each person who successfully completes the training is adequately trained to perform that person's assigned duties.

(d) Whenever the Administrator finds that revisions are necessary for the continued adequacy of a training program that has been granted final approval, the certificate holder shall, after notification by the Administrator, make any changes in the program that are found necessary by the Administrator. Within 30 days after the certificate holder receives the notice, it may file a petition to reconsider the notice with the Administrator. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

§ 135.327 Training program: curriculum.

(a) Each certificate holder must prepare and keep current a written training program curriculum for each type of aircraft for each crewmember required for that type aircraft. The curriculum must include ground and flight training required by this subpart.

(b) Each training program curriculum must include the following:

(1) A list of principal ground training subjects, including emergency training subjects, that are provided.

(2) A list of all the training devices, mockups, systems trainers, procedures trainers, or other training aids that the certificate holder will use.

(3) Detailed descriptions or pictorial displays of the approved normal, ab-

normal, and emergency maneuvers, procedures and functions that will be performed during each flight training phase or flight check, indicating those maneuvers, procedures and functions that are to be performed during the inflight portions of flight training and flight checks.

§ 135.329 Crewmember training requirements.

(a) Each certificate holder must include in its training program the following initial and transition ground training as appropriate to the particular assignment of the crewmember:

(1) Basic indoctrination ground training for newly hired crewmembers including instruction in at least the—

(i) Duties and responsibilities of crewmembers as applicable;

(ii) Appropriate provisions of this chapter;

(iii) Contents of the certificate holder's operating certificate and operations specifications (not required for flight attendants); and

(iv) Appropriate portions of the certificate holder's operating manual.

(2) The initial and transition ground training in §§ 135.345 and 135.349, as applicable.

(3) Emergency training in § 135.331.

(b) Each training program must provide the initial and transition flight training in § 135.347, as applicable.

(c) Each training program must provide recurrent ground and flight training in § 135.351.

(d) Upgrade training in §§ 135.345 and 135.347 for a particular type aircraft may be included in the training program for crewmembers who have qualified and served as second in command on that aircraft.

(e) In addition to initial, transition, upgrade and recurrent training, each training program must provide ground and flight training, instruction, and practice necessary to ensure that each crewmember—

(1) Remains adequately trained and currently proficient for each aircraft, crewmember position, and type of operation in which the crewmember serves; and

(2) Qualifies in new equipment, facilities, procedures, and techniques, including modifications to aircraft.

§ 135.331 Crewmember emergency training.

(a) Each training program must provide emergency training under this section for each aircraft type, model, and configuration, each crewmember, and each kind of operation conducted, as appropriate for each crewmember and the certificate holder.

(b) Emergency training must provide the following:

(1) Instruction in emergency assignments and procedures, including coordination among crewmembers.

(2) Individual instruction in the location, function, and operation of emergency equipment including—

(i) Equipment used in ditching and evacuation;

(ii) First aid equipment and its proper use; and

(iii) Portable fire extinguishers, with emphasis on the type of extinguisher to be used on different classes of fires.

(3) Instruction in the handling of emergency situations including—

(i) Rapid decompression;

(ii) Fire in flight or on the surface and smoke control procedures with emphasis on electrical equipment and related circuit breakers found in cabin areas;

(iii) Ditching and evacuation;

(iv) Illness, injury, or other abnormal situations involving passengers or crewmembers; and

(v) Hijacking and other unusual situations.

(4) Review of the certificate holder's previous aircraft accidents and incidents involving actual emergency situations.

(c) Each crewmember must perform at least the following emergency drills, using the proper emergency equipment and procedures, unless the Administrator finds that, for a particular drill, the crewmember can be adequately trained by demonstration:

(1) Ditching, if applicable.

(2) Emergency evacuation.

(3) Fire extinguishing and smoke control.

(4) Operation and use of emergency exits, including deployment and use of evacuation chutes, if applicable.

(5) Use of crew and passenger oxygen.

(6) Removal of life rafts from the aircraft, inflation of the life rafts, use of life lines, and boarding of passengers and crew, if applicable.

(7) Donning and inflation of life vests and the use of other individual flotation devices, if applicable.

(d) Crewmembers who serve in operations above 25,000 feet must receive instruction in the following:

(1) Respiration.

(2) Hypoxia.

(3) Duration of consciousness without supplemental oxygen at altitude.

(4) Gas expansion.

(5) Gas bubble formation.

(6) Physical phenomena and incidents of decompression.

§ 135.333 Training requirements: handling and carriage of hazardous materials.

(a) Except as provided in paragraph (d) of this section, no certificate holder may use any person to perform, and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless within the preceding 12 calendar months that person has satisfactorily completed initial or recurrent training in an appropriate training program established by the certificate holder, which includes instruction regarding—

(1) The proper shipper certification, packaging, marking, labeling, and documentation for hazardous materials; and

(2) The compatibility, loading, storage, and handling characteristics of hazardous materials.

(b) Each certificate holder shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) Each certificate holder that elects not to accept hazardous materials shall ensure that each crewmember is adequately trained to recognize those items classified as hazardous materials.

(d) If a certificate holder operates into or out of airports at which trained employees or contract personnel are not available, it may use persons not meeting the requirements of paragraphs (a) and (b) of this section to load, offload, or otherwise handle hazardous materials if these persons are supervised by a crewmember who is qualified under paragraphs (a) and (b) of this section.

§ 135.335 Approval of aircraft simulators and other training devices.

(a) Training courses using aircraft simulators and other training devices may be included in the certificate holder's training program if approved by the Administrator.

(b) Each aircraft simulator and other training device that is used in a training course or in checks required under this subpart must meet the following requirements:

(1) It must be specifically approved for—

(i) The certificate holder;

(ii) The type aircraft and, if applicable, the particular variation within type for which the training or check is being conducted; and

(iii) The particular maneuver, procedure, or crewmember function involved.

(2) It must maintain the performance, functional, and other characteristics that are required for approval.

(3) It must be modified to conform with any modification to the aircraft being simulated that changes the performance, functional, or other characteristics required for approval.

(c) In granting initial and final approval of training programs or revisions to them, the Administrator considers the training devices, methods and procedures listed in the certificate holder's curriculum under § 135.327.

§ 135.337 Training program: check airmen and instructor qualifications.

(a) No certificate holder may use a person, nor may any person serve, as a flight instructor or check airman in a training program established under this subpart unless, for the particular aircraft type involved, that person—

(1) Holds the airman certificate and ratings that must be held to serve as a pilot in command in operations under this part;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, required to serve as a pilot in command in operations under this part;

(3) Has satisfactorily completed the appropriate proficiency or competency checks required to serve as a pilot in command in operations under this part;

(4) Has satisfactorily completed the applicable training requirements of § 135.339;

(5) Holds a Class I or Class II medical certificate required to serve as a pilot in command in operations under this part;

(6) In the case of a check airman, has been approved by the Administrator for the airman duties involved; and

(7) In the case of a check airman used in an aircraft simulator only, holds a Class III medical certificate.

(b) No certificate holder may use a person, nor may any person serve, as a simulator instructor for a course of training given in an aircraft simulator under this subpart unless that person—

(1) Holds at least a commercial pilot certificate; and

(2) Has satisfactorily completed the following as evidenced by the approval of a check airman—

(i) Appropriate initial pilot and flight instructor ground training under this subpart; and

(ii) A simulator flight training course in the type simulator in which that person instructs under this subpart.

§ 135.339 Check airmen and flight instructors: initial and transition training.

(a) The initial and transition ground training for pilot check airmen must include the following:

(1) Pilot check airman duties, functions, and responsibilities.

(2) The applicable provisions of this chapter and certificate holder's policies and procedures.

(3) The appropriate methods, procedures, and techniques for conducting the required checks.

(4) Proper evaluation of pilot performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics that could adversely affect safety.

(5) The appropriate corrective action for unsatisfactory checks.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(b) The initial and transition ground training for pilot flight instructors, except for the holder of a valid flight instructor certificate, must include the following:

(1) The fundamental principles of the teaching-learning process.

(2) Teaching methods and procedures.

(3) The instructor-student relationship.

(c) The initial and transition flight training for pilot check airmen and pilot flight instructors must include the following:

(1) Enough inflight training and practice in conducting flight checks from the left and right pilot seats in the required normal, abnormal, and emergency maneuvers to ensure that person's competence to conduct the pilot flight checks and flight training under this subpart.

(2) The appropriate safety measures to be taken from either pilot seat for emergency situations that are likely to develop in training.

(3) The potential results of improper or untimely safety measures during training.

The requirements of paragraphs (2) and (3) of this paragraph may be accomplished in flight or in an approved simulator.

§ 135.341 Pilot and flight attendant crewmember training programs.

(a) Each certificate holder, other than one who is the only pilot used in the certificate holder's operation, shall establish and maintain an approved pilot training program, and each certificate holder who uses a flight attendant crewmember shall establish and maintain an approved flight attendant training program, that is appropriate to the operations to which each pilot and flight attendant is to be assigned, and will ensure that they are adequately trained to meet the applicable knowledge and practical testing requirements of §§ 135.293 through 135.301. However, the Administrator may authorize a deviation from this section if the Administrator finds that, because of the limited size and scope of the operation, safety will allow a deviation from these requirements.

(b) Each certificate holder required to have a training program by paragraph (a) of this section shall include in that program ground and flight training curriculums for—(1) Initial training; (2) Transition training; (3) Upgrade training; (4) Differences training; and (5) Recurrent training.

(c) Each certificate holder required to have a training program by paragraph (a) of this section shall provide current and appropriate study materials for use by each required pilot and flight attendant.

(d) The certificate holder shall furnish copies of the pilot and flight attendant crewmember training program, and all changes and additions, to the assigned representative of the Administrator. If the certificate holder uses training facilities of other persons, a copy of those training programs or appropriate portions used for those facilities shall also be furnished. Curricula that follow FAA published curricula may be cited by reference in the copy of the training program furnished to the representative of the Administrator and need not be furnished with the program.

§ 135.343 Crewmember initial and recurrent training requirements.

No certificate holder may use a person, nor may any person serve, as a crewmember in operations under this part unless that crewmember has completed the appropriate initial or recurrent training phase of the training program appropriate to the type of operation in which the crewmember is to serve since the beginning of the 12th calendar month before that service. This section does not apply to a certificate holder who is the only pilot used in the certificate holder's operation.

§ 135.345 Pilots: initial, transition, and upgrade ground training.

Initial, transition, and upgrade ground training for pilots must include instruction in at least the following, as applicable to their duties:

(a) General subjects—

(1) The certificate holder's flight locating procedures;

(2) Principles and methods for determining weight and balance, and runway limitations for takeoff and landing;

(3) Enough meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, windshear and, if appropriate, high altitude weather situations;

(4) Air traffic control systems, procedures, and phraseology;

(5) Navigation and the use of navigational aids, including instrument approach procedures;

(6) Normal and emergency communication procedures;

(7) Visual cues before and during descent below DH or MDA; and

(8) Other instructions necessary to ensure the pilot's competence.

(b) For each aircraft type—

(1) A general description;

(2) Performance characteristics;

(3) Engines and propellers;

(4) Major components;

(5) Major aircraft systems (i.e., flight controls, electrical, and hydraulic), other systems, as appropriate, principles of normal, abnormal, and emergency operations, appropriate procedures and limitations;

(6) Procedures for avoiding severe weather situations and for operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence and low altitude windshear), icing, hail, and other potentially hazardous meteorological conditions;

(7) Operating limitations;

(8) Fuel consumption and cruise control;

(9) Flight planning;

(10) Each normal and emergency procedure; and

(11) The approved Aircraft Flight Manual, or equivalent.

§ 135.347 Pilots: initial, transition, upgrade, and differences flight training.

(a) Initial, transition, upgrade, and differences training for pilots must include flight and practice in each of the maneuvers and procedures in the approved training program curriculum.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed in flight, except to the extent that certain maneuvers and procedures may be performed in an aircraft simulator, or an appropriate training device, as allowed by this subpart.

(c) If the certificate holder's approved training program includes a course of training using an aircraft simulator or other training device, each pilot must successfully complete—

(1) Training and practice in the simulator or training device in at least the maneuvers and procedures in this subpart that are capable of being performed in the aircraft simulator or training device; and

(2) A flight check in the aircraft or a check in the simulator or training device to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures that are capable of being performed in an aircraft simulator or training device.

§ 135.349 Flight attendants: initial and transition ground training.

Initial and transition ground training for flight attendants must include instruction in at least the following—

(a) General subjects—

(1) The authority of the pilot in command; and

(2) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety.

(b) For each aircraft type—

(1) A general description of the aircraft emphasizing physical characteristics that may have a bearing on ditching, evacuation, and inflight emergency procedures and on other related duties;

(2) The use of both the public address system and the means of communicating with other flight crewmembers, including emergency means in the case of attempted hijacking or other unusual situations; and

(3) Proper use of electrical galley equipment and the controls for cabin heat and ventilation.

§ 135.351 Recurrent training.

(a) Each certificate holder must ensure that each crewmember receives recurrent training and is adequately trained and currently proficient for the type aircraft and crewmember position involved.

(b) Recurrent ground training for crewmembers must include at least the following:

(1) A quiz or other review to determine the crewmember's knowledge of the aircraft and crewmember position involved.

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including emergency training.

(c) Recurrent flight training for pilots must include, at least, flight training in the maneuvers or procedures in this subpart, except that satisfactory completion of the check required by § 135.293 within the preceding 12 calendar months may be substituted for recurrent flight training.

Subpart I—Airplane Performance Operating Limitations

§ 135.361 Applicability.

(a) This subpart prescribes airplane performance operating limitations applicable to the operation of the categories of airplanes listed in § 135.363 when operated under this part.

(b) For the purpose of this subpart, "effective length of the runway," for landing means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway to the far end of the runway.

(c) For the purpose of this subpart, "obstruction clearance plane" means a plane sloping upward from the runway at a slope of 1:20 to the horizontal, and tangent to or clearing all obstructions within a specified area surrounding the runway as shown in a profile view of that area. In the plan view, the centerline of the specified area coincides with the centerline of the runway, beginning at the point where the obstruction clearance plane intersects the centerline of the runway and proceeding to a point at least 1,500 feet from the beginning point. After that the centerline coincides with the takeoff path over the ground for the runway (in the case of takeoffs) or with the instrument approach counterpart (for landings), or, where the applicable one of these paths has not been established, it proceeds consistent with turns of at least 4,000-foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions. This area extends laterally 200 feet on each side of the centerline at the point where the obstruction clearance plane intersects the runway and continues at this width to the end of the runway; then it increases uniformly to 500 feet on each side of the centerline at a point 1,500 feet from the intersection of the obstruction clearance plane with the runway; after that it extends laterally 500 feet on each side of the centerline.

§ 135.363 General.

(a) Each certificate holder operating a reciprocating engine powered large transport category airplane shall comply with §§ 135.365 through 135.377.

(b) Each certificate holder operating a turbine engine powered large transport category airplane shall comply with §§ 135.379 through 135.387, except that when it operates a turbopropeller-powered large transport category airplane certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, it may comply with §§ 135.365 through 135.377.

(c) Each certificate holder operating a large nontransport category airplane shall comply with §§ 135.389 through 135.395 and any determination of compliance must be based only on approved performance data. For the purpose of this subpart, a large nontransport category airplane is an airplane that was type certificated before July 1, 1942.

(d) Each certificate holder operating a small transport category airplane shall comply with § 135.397.

(e) Each certificate holder operating a small nontransport category airplane shall comply with § 135.399.

(f) The performance data in the Airplane Flight Manual applies in determining compliance with §§ 135.365 through 135.387. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of change in the specific variables, if the results of the interpolation or computations are substantially as accurate as the results of direct tests.

(g) No person may take off a reciprocating engine powered large transport category airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of this subpart) after taking into account the temperature operating correction factors in § 4a.749a-T or § 4b.117 of the Civil Air Regulations in effect on January 31, 1965, and in the applicable Airplane Flight Manual.

(h) The Administrator may authorize in the operations specifications deviations from this subpart if special circumstances make a literal observance of a requirement unnecessary for safety.

(i) The 10-mile width specified in §§ 135.369 through 135.373 may be reduced to 5 miles, for not more than 20 miles, when operating under VFR or where navigation facilities furnish reliable and accurate identification of high ground and obstructions located outside of 5 miles, but within 10 miles, on each side of the intended track.

§ 135.365 Large transport category airplanes: reciprocating engine powered: weight limitations.

(a) No person may take off a reciprocating engine powered large transport category airplane from an airport located at an elevation outside of the range for which maximum takeoff weights have been determined for that airplane.

(b) No person may take off a reciprocating engine powered large transport category airplane for an airport of intended destination that is located at an elevation outside of the range for which maximum landing weights have been determined for that airplane.

(c) No person may specify, or have specified, an alternate airport that is located at an elevation outside of the range for which maximum landing weights have been determined for the reciprocating engine powered large transport category airplane concerned.

(d) No person may take off a reciprocating engine powered large transport category airplane at a weight more than the maximum authorized takeoff weight for the elevation of the airport.

(e) No person may take off a reciprocating engine powered large transport category airplane if its weight on arrival at the airport of destination will be more than the maximum authorized landing weight for the elevation of that airport, allowing for normal consumption of fuel and oil en route.

§ 135.367 Large transport category airplanes: reciprocating engine powered: takeoff limitations.

(a) No person operating a reciprocating engine powered large transport category airplane may take off that airplane unless it is possible—

(1) To stop the airplane safely on the runway, as shown by the accelerate-stop distance data, at any time during takeoff until reaching critical-engine failure speed;

(2) If the critical engine fails at any time after the airplane reaches critical-engine failure speed V_1, to continue the takeoff and reach a height of 50 feet, as indicated by the takeoff path data, before passing over the end of the runway; and

(3) To clear all obstacles either by at least 50 feet vertically (as shown by the takeoff path data) or 200 feet horizontally within the airport boundaries and 300 feet horizontally beyond the boundaries, without banking before reaching a height of 50 feet (as shown by the takeoff path data) and after that without banking more than 15 degrees.

(b) In applying this section, corrections must be made for any runway gradient. To allow for wind effect, takeoff data based on still air may be corrected by taking into account not more than 50 percent of any reported headwind component and not less than 150 percent of any reported tailwind component.

§ 135.369 Large transport category airplanes: reciprocating engine powered: en route limitations: all engines operating.

(a) No person operating a reciprocating engine powered large transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with all engines operating, of at least 6.90 Vs_0 (that is, the number of feet per minute obtained by multiplying the number of knots by 6.90) at an altitude of a least 1,000 feet above the highest ground or obstruction within ten miles of each side of the intended track.

(b) This section does not apply to large transport category airplanes certificated under Part 4a of the Civil Air Regulations.

§ 135.371 Large transport category airplanes: reciprocating engine powered: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a reciprocating engine powered large transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with one engine inoperative, of at least $(0.079-0.106/N)\ Vs_0^2$ (where N is the number of engines installed and Vs_0 is expressed in knots) at an altitude of least 1,000 feet above the highest ground or obstruction within 10 miles of each side of the intended track. However, for the purposes of this paragraph the rate of climb for transport category airplanes certificated under Part 4a of the Civil Air Regulations is $0.026\ Vs_0^2$.

(b) In place of the requirements of paragraph (a) of this section, a person may, under an approved procedure, operate a reciprocating engine powered large transport category airplane at an all-engines-operating altitude that allows the airplane to continue, after an engine failure, to an alternate airport where a landing can be made under § 135.377, allowing for normal consumption of fuel and oil. After the assumed failure, the flight path must clear the ground and any obstruction within five miles on each side of the intended track by at least 2,000 feet.

(c) If an approved procedure under paragraph (b) of this section is used, the certificate holder shall comply with the following:

(1) The rate of climb (as prescribed in the Airplane Flight Manual for the appropriate weight and altitude) used in calculating the airplane's flight path shall be diminished by an amount in feet per minute, equal to $(0.079-0.106/N)\ Vs_0^2$ (when N is the number of engines installed and Vs_0 is expressed in knots) for airplanes certificated under Part 25 of this chapter and by $0.026\ Vs_0^2$ for airplanes certificated under Part 4a of the Civil Air Regulations.

(2) The all-engines-operating altitude shall be sufficient so that in the event the critical engine becomes inoperative at any point along the route, the flight will be able to proceed to a predetermined alternate airport by use of this procedure. In determining the takeoff weight, the airplane is assumed to pass over the critical obstruction following engine failure at a point no closer to the critical obstruction than the nearest approved radio navigational fix, unless the Administrator approves a procedure established on a different basis upon finding that adequate operational safeguards exist.

(3) The airplane must meet the provisions of paragraph (a) of this section at 1,000 feet above the airport used as an alternate in this procedure.

(4) The procedure must include an approved method of accounting for winds and temperatures that would otherwise adversely affect the flight path.

(5) In complying with this procedure, fuel jettisoning is allowed if the certificate holder shows that it has an adequate training program, that proper instructions are given to the flight crew, and all other precautions are taken to ensure a safe procedure.

(6) The certificate holder and the pilot in command shall jointly elect an alternate airport for which the appropriate weather reports or forecasts, or any combination of them, indicate that weather conditions will be at or above the alternate weather minimum specified in the certificate holder's operations specifications for that airport when the flight arrives.

§ 135.373 Part 25 transport category airplanes with four or more engines: reciprocating engine powered: en route limitations: two engines inoperative.

(a) No person may operate an airplane certificated under Part 25 and having four or more engines unless—

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets § 135.377; or

(2) It is operated at a weight allowing the airplane, with the two critical engines inoperative, to climb at 0.013 Vs_o^2 feet per minute (that is, the number of feet per minute obtained by multiplying the number of knots squared by 0.013) at an altitude of 1,000 feet above the highest ground or obstruction within 10 miles on each side of the intended track, or at an altitude of 5,000 feet, whichever is higher.

(b) For the purposes of paragraph (a)(2) of this section, it is assumed that—

(1) The two engines fail at the point that is most critical with respect to the takeoff weight;

(2) Consumption of fuel and oil is normal with all engines operating up to the point where the two engines fail with two engines operating beyond that point;

(3) Where the engines are assumed to fail at an altitude above the prescribed minimum altitude, compliance with the prescribed rate of climb at the prescribed minimum altitude need not be shown during the descent from the cruising altitude to the prescribed minimum altitude, if those requirements can be met once the prescribed minimum altitude is reached, and assuming descent to be along a net flight path and the rate of descent to be 0.013 Vs_o^2 greater than the rate in the approved performance data; and

(4) If fuel jettisoning is provided, the airplane's weight at the point where the two engines fail is considered to be not less than that which would include enough fuel to proceed to an airport meeting § 135.377 and to arrive at an altitude of at least 1,000 feet directly over that airport.

§ 135.375 Large transport category airplanes: reciprocating engine powered: landing limitations: destination airports.

(a) Except as provided in paragraph (b) of this section, no person operating a reciprocating engine powered large transport category airplane may take off that airplane, unless its weight on arrival, allowing for normal consumption of fuel and oil in flight, would allow a full stop landing at the intended destination within 60 percent of the effective length of each runway described below from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway. For the purposes of determining the allowable landing weight at the destination airport the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction (forecast for the expected time of arrival), the ground handling characteristics of the type of airplane, and other conditions such as landing aids and terrain, and allowing for the effect of the landing path and roll of not more than 50 percent of the headwind component or not less than 150 percent of the tailwind component.

(b) An airplane that would be prohibited from being taken off because it could not meet paragraph (a)(2) of this section may be taken off if an alternate airport is selected that meets all of this section except that the airplane can accomplish a full stop landing within 70 percent of the effective length of the runway.

§ 135.377 Large transport category airplanes: reciprocating engine powered: landing limitations: alternate airports.

No person may list an airport as an alternate airport in a flight plan unless the airplane (at the weight anticipated at the time of arrival at the airport), based on the assumptions in § 135.375(a) (1) and (2), can be brought to a full stop landing within 70 percent of the effective length of the runway.

§ 135.379 Large transport category airplanes: turbine engine powered: takeoff limitations.

(a) No person operating a turbine engine powered large transport category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at takeoff.

(b) No person operating a turbine engine powered large transport category airplane certificated after August 26, 1957, but before August 30, 1959 (SR422, 422A), may take off that airplane at a weight greater than that listed in the Airplane Flight Manual for the minumum distance required for takeoff. In the case of an airplane certificated after September 30, 1958 (SR422A, 422B), the takeoff distance may include a clearway distance but the clearway distance included may not be greater than one-half of the takeoff run.

(c) No person operating a turbine engine powered large transport category airplane certificated after August 29, 1959 (SR422B), may take off that airplane at a weight greater than that listed in the Airplane Flight Manual at which compliance with the following may be shown:

(1) The accelerate-stop distance, as defined in § 25.109 of this chapter, must not exceed the length of the runway plus the length of any stopway.

(2) The takeoff distance must not exceed the length of the runway plus the length of any clearway except that the length of any clearway included must not be greater than one-half the length of the runway.

(3) The takeoff run must not be greater than the length of the runway.

(d) No person operating a turbine engine powered large transport category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual—

(1) For an airplane certificated after August 26, 1957, but before October 1, 1958 (SR422), that allows a takeoff path that clears all obstacles either by at least (35+0.01 D) feet vertically (D is the distance along the intended flight path from the end of the runway in feet), or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries; or

(2) For an airplane certificated after September 30, 1958 (SR422A, 422B), that allows a net takeoff flight path that clears all obstacles either by a height of at least 35 feet vertically, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries.

(e) In determining maximum weights, minimum distances and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, and the ambient temperature and wind component at the time of takeoff.

(f) For the purposes of this section, it is assumed that the airplane is not banked before reaching a height of 50 feet, as shown by the takeoff path or net takeoff flight path data (as appropriate) in the Airplane Flight Manual, and after that the maximum bank is not more than 15 degrees.

(g) For the purposes of this section, the terms, "takeoff distance," "takeoff run," "net takeoff flight path," have the same meanings as set forth in the rules under which the airplane was certificated.

§ 135.381 Large transport category airplanes: turbine engine powered: en route limitations: one engine inoperative.

(a) No person operating a turbine engine powered large transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that is greater than that which (under the approved, one engine inoperative, en route net flight path data in the Airplane Flight Manual for that airplane) will allow compliance with subparagraph (1) or (2) of this paragraph, based on the ambient temperatures expected en route.

(1) There is a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five statute miles on each side of the intended track, and, in addition, if that airplane was certificated after August 29, 1958 (SR422B), there is a positive slope at 1,500 feet above the airport where the airplane is assumed to land after an engine fails.

(2) The net flight path allows the airplane to continue flight from the cruising altitude to an airport where a landing can be made under § 135.387 clearing all terrain and obstructions within five statute miles of the intended track by at least 2,000 feet vertically and with a positive slope at 1,000 feet above the airport where the airplane lands after an engine fails, or, if that airplane was certificated after September 30, 1958 (SR422A, 422B), with a positive slope at 1,500 feet above the airport where the airplane lands after an engine fails.

(b) For the purpose of paragraph (a)(2) of this section, it is assumed that—

(1) The engine fails at the most critical point en route;

(2) The airplane passes over the critical obstruction, after engine failure at a point that is no closer to the obstruction than the approved radio navigation fix, unless the Administrator authorizes a different procedure based on adequate operational safeguards;

(3) An approved method is used to allow for adverse winds;

(4) Fuel jettisoning will be allowed if the certificate holder shows that the crew is properly instructed, that the training program is adequate, and that all other precautions are taken to ensure a safe procedure;

(5) The alternate airport is selected and meets the prescribed weather minimums; and

(6) The consumption of fuel and oil after engine failure is the same as the consumption that is allowed for in the approved net flight path data in the Airplane Flight Manual.

§ 135.383 Large transport category airplanes: turbine engine powered: en route limitations: two engines inoperative.

(a) Airplanes certificated after August 26, 1957, but before October 1, 1958 (SR422). No person may operate a turbine engine powered large transport category airplane along an intended route unless that person complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets § 135.387.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets § 135.387, with a net flight path (considering the ambient temperature anticipated along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five statute miles on each side of the intended track, or at an altitude of 5,000 feet, whichever is higher.

For the purposes of paragraph (2) of this paragraph, it is assumed that the two engines fail at the most critical point en route, that if fuel jettisoning is provided, the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport and to arrive at an altitude of at least 1,000 feet directly over the airport, and that the fuel and oil consumption after engine failure is the same as the consumption allowed for in the net flight path data in the Airplane Flight Manual.

(b) Airplanes certificated after September 30, 1958, but before August 30, 1959 (SR422A). No person may operate a turbine engine powered large transport category airplane along an intended route unless that person complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets § 135.387.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets § 135.387 with a net flight path (considering the ambient temperatures anticipated along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five statute miles on each side of the intended track, or at an altitude of 2,000 feet, whichever is higher.

For the purpose of paragraph (2) of this paragraph, it is assumed that the two engines fail at the most critical point en route, that the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet directly over the airport, and after that to fly for 15 minutes at cruise power or thrust, or both, and that the consumption of fuel and oil after engine failure is the same as the consumption allowed for in the net flight path data in the Airplane Flight Manual.

(c) Aircraft certificated after August 29, 1959 (SR422B). No person may operate a turbine engine powered large transport category airplane along an intended route unless that person complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets § 135.387.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets § 135.387, with the net flight path (considering the ambient temperatures anticipated along the track) clearing vertically by at least 2,000 feet all terrain and obstructions within five statute miles on each side of the intended track. For the purposes of this paragraph, it is assumed that—

(i) The two engines fail at the most critical point en route;

(ii) The net flight path has a positive slope at 1,500 feet above the airport where the landing is assumed to be made after the engines fail;

(iii) Fuel jettisoning will be approved if the certificate holder shows that the crew is properly instructed, that the training program is adequate, and that

all other precautions are taken to ensure a safe procedure;

(iv) The airplane's weight at the point where the two engines are assumed to fail provides enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet directly over the airport, and after that to fly for 15 minutes at cruise power or thrust, or both; and

(v) The consumption of fuel and oil after the engines fail is the same as the consumption that is allowed for in the net flight path data in the Airplane Flight Manual.

§ 135.385 Large transport category airplanes: turbine engine powered: landing limitations: destination airports.

(a) No person operating a turbine engine powered large transport category airplane may take off that airplane at a weight that (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) the weight of the airplane on arrival would exceed the landing weight in the Airplane Flight Manual for the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing.

(b) Except as provided in paragraph (c), (d), or (e) of this section, no person operating a turbine engine powered large transport category airplane may take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(c) A turbopropeller powered airplane that would be prohibited from being taken off because it could not meet paragraph (b)(2) of this section, may be taken off if an alternate airport is selected that meets all of this section except that the airplane can accomplish a full stop landing within 70 percent of the effective length of the runway.

(d) Unless, based on a showing of actual operating landing techniques on wet runways, a shorter landing distance (but never less than that required by paragraph (b) of this section) has been approved for a specific type and model airplane and included in the Airplane Flight Manual, no person may take off a turbojet airplane when the appropriate weather reports or forecasts, or any combination of them, indicate that the runways at the destination airport may be wet or slippery at the estimated time of arrival unless the effective runway length at the destination airport is at least 115 percent of the runway length required under paragraph (b) of this section.

(e) A turbojet airplane that would be prohibited from being taken off because it could not meet paragraph (b)(2) of this section may be taken off if an alternate airport is selected that meets all of paragraph (b) of this section.

§ 135.387 Large transport category airplanes: turbine engine powered: landing limitations: alternate airports.

No person may select an airport as an alternate airport for a turbine engine powered large transport category airplane unless (based on the assumptions in § 135.385(b)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 70 percent of the effective length of the runway for turbopropeller-powered airplanes and 60 percent of the effective length of the runway for turbojet airplanes, from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

§ 135.389 Large nontransport category airplanes: takeoff limitations.

(a) No person operating a large nontransport category airplane may take off that airplane at a weight greater than the weight that would allow the airplane to be brought to a safe stop within the effective length of the runway, from any point during the takeoff before reaching 105 percent of minimum control speed (the minimum speed at which an airplane can be safely controlled in flight after an engine becomes inoperative) or 115 percent of the power off stalling speed in the takeoff configuration, whichever is greater.

(b) For the purposes of this section—

(1) It may be assumed that takeoff power is used on all engines during the acceleration;

(2) Not more than 50 percent of the reported headwind component, or not less than 150 percent of the reported tailwind component, may be taken into account;

(3) The average runway gradient (the difference between the elevations of the endpoints of the runway divided by the total length) must be considered if it is more than one-half of one percent;

(4) It is assumed that the airplane is operating in standard atmosphere; and

(5) For takeoff, "effective length of the runway" means the distance from the end of the runway at which the takeoff is started to a point at which the obstruction clearance plane associated with the other end of the runway intersects the runway centerline.

§ 135.391 Large nontransport category airplanes: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a large nontransport category airplane may take off that airplane at a weight that does not allow a rate of climb of at least 50 feet a minute, with the critical engine inoperative, at an altitude of at least 1,000 feet above the highest obstruction within five miles on each side of the intended track, or 5,000 feet, whichever is higher.

(b) Without regard to paragraph (a) of this section, if the Administrator finds that safe operations are not impaired, a person may operate the airplane at an altitude that allows the airplane, in case of engine failure, to clear all obstructions within five miles on each side of the intended track by 1,000 feet. If this procedure is used, the rate of descent for the appropriate weight and altitude is assumed to be 50 feet a minute greater than the rate in the approved performance data. Before approving such a procedure, the Administrator considers the following for the route, route segement, or area concerned:

(1) The reliability of wind and weather forecasting.

(2) The location and kinds of navigation aids.

(3) The prevailing weather conditions, particularly the frequency and amount of turbulence normally encountered.

(4) Terrain features.

(5) Air traffic problems.

(6) Any other operational factors that affect the operations.

(c) For the purposes of this section, it is assumed that—

(1) The critical engine is inoperative;

(2) The propeller of the inoperative engine is in the minimum drag position;

(3) The wing flaps and landing gear are in the most favorable position;

(4) The operating engines are operating at the maximum continuous power available;

(5) The airplane is operating in standard atmosphere; and

(6) The weight of the airplane is progressively reduced by the anticipated consumption of fuel and oil.

§ 135.393 Large nontransport category airplanes: landing limitations: destination airports.

(a) No person operating a large nontransport category airplane may take off that airplane at a weight that—

(1) Allowing for anticipated consumption of fuel and oil, is greater than the weight that would allow a full stop landing within 60 percent of the effective length of the most suitable runway at the destination airport; and

(2) Is greater than the weight allowable if the landing is to be made on the runway—

(i) With the greatest effective length in still air; and

(ii) Required by the probable wind, taking into account not more than 50 percent of the headwind component or not less than 150 percent of the tailwind component.

(b) For the purpose of this section, it is assumed that—

(1) The airplane passes directly over the intersection of the obstruction clearance plane and the runway at a height of 50 feet in a steady gliding approach at a true indicated airspeed of at least 1.3 V_{so};

(2) The landing does not require exceptional pilot skill; and

(3) The airplane is operating in standard atmosphere.

§ 135.395 Large nontransport category airplanes: landing limitations: alternate airports.

No person may select an airport as an alternate airport for a large nontransport category airplane unless that airplane (at the weight anticipated at the time of arrival), based on the assumptions in § 135.393(b), can be brought to a full stop landing within 70 percent of the effective length of the runway.

§ 135.397 Small transport category airplane performance operating limitations.

(a) No person may operate a reciprocating engine powered small transport category airplane unless that person complies with the weight limitations in § 135.365, the takeoff limitations in § 135.367 (except paragraph (a)(3)), and the landing limitations in §§ 135.375 and 135.377.

(b) No person may operate a turbine engine powered small transport category airplane unless that person complies with the takeoff limitations in § 135.379 (except paragraphs (d) and (f)) and the landing limitations in §§ 135.385 and 135.387.

§ 135.399 Small nontransport category airplane performance operating limitations.

No person may operate a reciprocating engine or turbopropeller-powered small airplane that is certificated under § 135.169(b) (2), (3), or (4), unless that person complies with the takeoff weight limitations in the approved Airplane Flight Manual or equivalent for operations under this part, and, if the airplane is certificated under § 135.169(b)(4), with the landing weight limitations in the approved Airplane Flight Manual or equivalent for operations under this part.

Subpart J—Maintenance, Preventive Maintenance, and Alterations

§ 135.411 Applicability.

(a) This subpart prescribes rules in addition to those in other parts of this chapter for the maintenance, preventive maintenance, and alterations for each certificate holder as follows:

(1) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, shall be maintained under Parts 91 and 43 of this chapter and §§ 135.415, 135.417, and 135.421. An approved aircraft inspection program may be used under § 135.419.

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a maintenance program in §§ 135.415, 135.417, and 135.423 through 135.443.

(b) A certificate holder who is not otherwise required, may elect to maintain its aircraft under paragraph (a)(2) of this section.

§ 135.413 Responsibility for airworthiness.

(a) Each certificate holder is primarily responsible for the airworthiness of its aircraft, including airframes, aircraft engines, propellers, rotors, appliances, and parts, and shall have its aircraft maintained under this chapter, and shall have defects repaired between required maintenance under Part 43 of this chapter.

(b) Each certificate holder who maintains its aircraft under § 135.411(a)(2) shall—

(1) Perform the maintenance, preventive maintenance, and alteration of its aircraft, including airframe, aircraft engines, propellers, rotors, appliances, emergency equipment and parts, under its manual and this chapter; or

(2) Make arrangments with another person for the performance of maintenance, preventive maintenance, or alteration. However, the certificate holder shall ensure that any maintenance, preventive maintenance, or alteration that is performed by another person is performed under the certificate holder's manual and this chapter.

§ 135.415 Mechanical reliability reports.

(a) Each certificate holder shall report the occurrence or detection of each failure, malfunction, or defect in an aircraft concerning—

(1) Fires during flight and whether the related fire-warning system functioned properly;

(2) Fires during flight not protected by related fire-warning system;

(3) False fire-warning during flight;

(4) An exhaust system that causes damage during flight to the engine, adjacent structure, equipment, or components;

(5) An aircraft component that causes accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or passenger cabin during flight;

(6) Engine shutdown during flight because of flameout;

(7) Engine shutdown during flight when external damage to the engine or aircraft structure occurs;

(8) Engine shutdown during flight due to foreign object ingestion or icing;

(9) Shutdown of more than one engine during flight;

(10) A propeller feathering system or ability of the system to control overspeed during flight;

(11) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage during flight;

(12) An unwanted landing gear extension or retraction or opening or closing of landing gear doors during flight;

(13) Brake system components that result in loss of brake actuating force when the aircraft is in motion on the ground;

(14) Aircraft structure that requires major repair;

(15) Cracks, permanent deformation, or corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA; and

(16) Aircraft components or systems that result in taking emergency actions during flight (except action to shut-down an engine).

(b) For the purpose of this section, "during flight" means the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft that occurs or is detected at any time if, in its opinion, the failure, malfunction, or defect has endangered or may endanger the safe operation of the aircraft.

(d) Each certificate holder shall send each report required by this section, in

writing, covering each 24-hour period beginning at 0900 hours local time of each day and ending at 0900 hours local time on the next day to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder. Each report of occurrences during a 24-hour period must be mailed or delivered to that office within the next 72 hours. However, a report that is due on Saturday or Sunday may be mailed or delivered on the following Monday and one that is due on a holiday may be mailed or delivered on the next work day. For aircraft operated in areas where mail is not collected, reports may be mailed or delivered within 72 hours after the aircraft returns to a point where the mail is collected.

(e) The certificate holder shall transmit the reports required by this section on a form and in a manner prescribed by the Administrator, and shall include as much of the following as is available:

(1) The type and identification number of the aircraft.

(2) The name of the operator.

(3) The date.

(4) The nature of the failure, malfunction, or defect.

(5) Identification of the part and system involved, including available information pertaining to type designation of the major component and time since last overhaul, if known.

(6) Apparent cause of the failure, malfunction or defect (e.g., wear, crack, design deficiency, or personnel error).

(7) Other pertinent information necessary for more complete identification, determination of seriousness, or corrective action.

(f) A certificate holder that is also the holder of a type certificate (including a supplemental type certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 or § 37.17 of this chapter or under the accident reporting provisions of Part 830 of the regulations of the National Transportation Safety Board.

(g) No person may withhold a report required by this section even though all information required by this section is not available.

(h) When the certificate holder gets additional information, including information from the manufacturer or other agency, concerning a report required by this section, it shall expeditiously submit it as a supplement to the first report and reference the date and place of submission of the first report.

§ 135.417 Mechanical interruption summary report.

Each certificate holder shall mail or deliver, before the end of the 10th day of the following month, a summary report of the following occurrences in multiengine aircraft for the preceding month to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder:

(a) Each interruption to a flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 135.415.

(b) The number of propeller featherings in flight, listed by type of propeller and engine and aircraft on which it was installed. Propeller featherings for training, demonstration, or flight check purposes need not be reported.

§ 135.419 Approved aircraft inspection program.

(a) Whenever the Administrator finds that the aircraft inspections required or allowed under Part 91 of this chapter are not adequate to meet this part, or upon application by a certificate holder, the Administrator may amend the certificate holder's operations specifications under § 135.17, to require or allow an approved aircraft inspection program for any make and model aircraft of which the certificate holder has the exclusive use of at least one aircraft (as defined in § 135.25(b)).

(b) A certificate holder who applies for an amendment of its operations specifications to allow an approved aircraft inspection program must submit that program with its application for approval by the Administrator.

(c) Each certificate holder who is required by its operations specifications to have an approved aircraft inspection program shall submit a program for approval by the Administrator within 30 days of the amendment of its operations specifications or within any other period that the Administrator may prescribe in the operations specifications.

(d) The aircraft inspection program submitted for approval by the Administrator must contain the following:

(1) Instructions and procedures for the conduct of aircraft inspections (which must include necessary tests and checks), setting forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including emergency equipment, that must be inspected.

(2) A schedule for the performance of the aircraft inspections under paragraph (1) of this paragraph expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

(3) Instructions and procedures for recording discrepancies found during inspections and correction or deferral of discrepancies including form and disposition of records.

(e) After approval, the certificate holder shall include the approved aircraft inspection program in the manual required by § 135.21.

(f) Whenever the Administrator finds that revisions to an approved aircraft inspection program are necessary for the continued adequacy of the program, the certificate holder shall, after notification by the Administrator, make any changes in the program found by the Administrator to be necessary. The certificate holder may petition the Administrator to reconsider the notice to make any changes in a program. The petition must be filed with the representatives of the Administrator assigned to it within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(g) Each certificate holder who has an approved aircraft inspection program shall have each aircraft that is subject to the program inspected in accordance with the program.

(h) The registration number of each aircraft that is subject to an approved aircraft inspection program must be included in the operations specifications of the certificate holder.

§ 135.421 Additional maintenance requirements.

(a) Each certificate holder who operates an aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, must comply with the manufacturer's recommended maintenance programs, or a program approved by the Administrator, for each aircraft engine, propeller, rotor, and each item of emergency equipment required by this chapter.

(b) For the purpose of this section, a manufacturer's maintenance program is one which is contained in the maintenance manual or maintenance instructions set forth by the manufacturer as required by this chapter for the aircraft, aircraft engine, propeller, rotor or item of emergency equipment.

§ 135.423 Maintenance, preventive maintenance, and alteration organization.

(a) Each certificate holder that performs any of its maintenance (other than required inspections), preventive maintenance, or alterations, and each person with whom it arranges for the performance of that work, must have an organization adequate to perform the work.

(b) Each certificate holder that performs any inspections required by its manual under § 135.427(b) (2) or (3), (in this subpart referred to as "required inspections"), and each person with whom it arranges for the performance of that work, must have an organization adequate to perform that work.

(c) Each person performing required inspections in addition to other maintenance, preventive maintenance, or alterations, shall organize the performance of those functions so as to separate the required inspection functions from the other maintenance, preventive maintenance, and alteration functions. The separation shall be below the level of administrative control at which overall responsibility for the required inspection functions and other maintenance, preventive maintenance, and alteration functions is exercised.

§ 135.425 Maintenance, preventive maintenance, and alteration programs.

Each certificate holder shall have an inspection program and a program covering other maintenance, preventive maintenance, and alterations, that ensures that—

(a) Maintenance, preventive maintenance, and alterations performed by it, or by other persons, are performed under the certificate holder's manual;

(b) Competent personnel and adequate facilities and equipment are provided for the proper performance of maintenance, preventive maintenance, and alterations; and

(c) Each aircraft released to service is airworthy and has been properly maintained for operation under this part.

§ 135.427 Manual requirements.

(a) Each certificate holder shall put in its manual the chart or description of the certificate holder's organization required by § 135.423 and a list of persons with whom it has arranged for the performance of any of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work.

(b) Each certificate holder shall put in its manual the programs required by § 135.425 that must be followed in performing maintenance, preventive maintenance, and alterations of that certificate holder's aircraft, including airframes, aircraft engines, propellers, rotors, appliances, emergency equipment, and parts, and must include at least the following:

(1) The method of performing routine and nonroutine maintenance (other than required inspections), preventive maintenance, and alterations.

(2) A designation of the items of maintenance and alteration that must be inspected (required inspections) including at least those that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft, if not performed properly or if improper parts or materials are used.

(3) The method of performing required inspections and a designation by occupational title of personnel authorized to perform each required inspection.

(4) Procedures for the reinspection of work performed under previous required inspection findings ("buy-back procedures").

(5) Procedures, standards, and limits necessary for required inspections and acceptance or rejection of the items required to be inspected and for periodic inspection and calibration of precision tools, measuring devices, and test equipment.

(6) Procedures to ensure that all required inspections are performed.

(7) Instructions to prevent any person who performs any item of work from performing any required inspection of that work.

(8) Instructions and procedures to prevent any decision of an inspector regarding any required inspection from being countermanded by persons other than supervisory personnel of the inspection unit, or a person at the level of administrative control that has overall responsibility for the management of both the required inspection functions and the other maintenance, preventive maintenance, and alterations functions.

(9) Procedures to ensure that required inspections, other maintenance, preventive maintenance, and alterations that are not completed as a result of work interruptions are properly completed before the aircraft is released to service.

(c) Each certificate holder shall put in its manual a suitable system (which may include a coded system) that provides for the retention of the following information—

(1) A description (or reference to data acceptable to the Administrator) of the work performed;

(2) The name of the person performing the work if the work is performed by a person outside the organization of the certificate holder; and

(3) The name or other positive identification of the individual approving the work.

§ 135.429 Required inspection personnel.

(a) No person may use any person to perform required inspections unless the person performing the inspection is appropriately certificated, properly trained, qualified, and authorized to do so.

(b) No person may allow any person to perform a required inspection unless, at the time, the person performing that inspection is under the supervision and control of an inspection unit.

(c) No person may perform a required inspection if that person performed the item of work required to be inspected.

(d) Each certificate holder shall maintain, or shall determine that each person with whom it arranges to perform its required inspections maintains, a current listing of persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title and the inspections that they are authorized to perform. The certificate holder (or person with whom it arranges to perform its required inspections) shall give written information to each person so authorized, describing the extent of that person's responsibilities, authorities, and inspectional limitations. The list shall be made available for inspection by the Administrator upon request.

§ 135.431 Continuing analysis and surveillance.

(a) Each certificate holder shall establish and maintain a system for the continuing analysis and surveillance of the performance and effectiveness of its inspection program and the program covering other maintenance, preventive maintenance, and alterations and for the correction of any deficiency in those programs, regardless of whether those programs are carried out by the certificate holder or by another person.

(b) Whenever the Administrator finds that either or both of the programs described in paragraph (a) of this section does not contain adequate procedures and standards to meet this part, the certificate holder shall, after notification by the Administrator, make changes in those programs requested by the Administrator.

(c) A certificate holder may petition the Administrator to reconsider the notice to make a change in a program. The petition must be filed with the FAA Flight Standards District Office charged with the overall inspection of the certificate holder within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

§ 135.433 Maintenance and preventive maintenance training program.

Each certificate holder or a person performing maintenance or preventive maintenance functions for it shall have a training program to ensure that each person (including inspection

personnel) who determines the adequacy of work done is fully informed about procedures and techniques and new equipment in use and is competent to perform that person's duties.

§ 135.435 Certificate requirements.

(a) Except for maintenance, preventive maintenance, alterations, and required inspections performed by repair stations certificated under the provisions of Subpart C of Part 145 of this chapter, each person who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections must hold an appropriate airman certificate.

(b) For the purpose of this section, a person "directly in charge" is each person assigned to a position in which that person is responsible for the work of a shop or station that performs maintenance, preventive maintenance, alterations, or other functions affecting airworthiness. A person who is "directly in charge" need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the person performing the work.

§ 135.437 Authority to perform and approve maintenance, preventive maintenance, and alterations.

(a) A certificate holder may perform, or make arrangements with other persons to perform, maintenance, preventive maintenance, and alterations as provided in its maintenance manual. In addition, a certificate holder may perform these functions for another certificate holder as provided in the maintenance manual of the other certificate holder.

(b) A certificate holder may approve any airframe, aircraft engine, propeller, rotor, or appliance for return to service after maintenance, preventive maintenance, or alterations that are performed under paragraph (a) of this section. However, in the case of a major repair or alteration, the work must have been done in accordance with technical data approved by the Administrator.

§ 135.439 Maintenance recording requirements.

(a) Each certificate holder shall keep (using the system specified in the manual required in § 135.427(1) the following records for the periods specified in paragraph (b) of this section:

(1) All the records necessary to show that all requirements for the issuance of an airworthiness release under § 135.443 have been met.

(2) Records containing the following information:

(i) The total time in service of the airframe, engine, propeller, and rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of each item installed on the aircraft which are required to be overhauled on a specified time basis.

(iv) The identification of the current inspection status of the aircraft, including the time since the last inspections required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vi) A list of current major alterations and repairs to each airframe, engine, propeller, rotor, and appliance.

(b) Each certificate holder shall retain the records required to be kept by this section for the following periods:

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, rotor, and appliance the records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, rotor, and appliance shall be retained until the work is superseded by work of equivalent scope and detail.

(3) The records specified in paragraph (a)(2) of this section shall be retained and transferred with the aircraft at the time the aircraft is sold.

(c) The certificate holder shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any representative of the National Transportation Safety Board.

§ 135.441 Transfer of maintenance records.

Each certificate holder who sells a United States registered aircraft shall transfer to the purchaser, at the time of the sale, the following records of that aircraft, in plain language form or in coded form which provides for the preservation and retrieval of information in a manner acceptable to the Administrator:

(a) The records specified in § 135.439(a)(2).

(b) The records specified in § 135.439(a)(1) which are not included in the records covered by paragraph (a) of this section, except that the purchaser may allow the seller to keep physical custody of such records. However, custody of records by the seller does not relieve the purchaser of its responsibility under § 135.439(c) to make the records available for inspection by the Administrator or any representative of the National Transportation Safety Board.

§ 135.443 Airworthiness release or aircraft maintenance log entry.

(a) No certificate holder may operate an aircraft after maintenance, preventive maintenance, or alterations are performed on the aircraft unless the certificate holder prepares, or causes the person with whom the certificate holder arranges for the performance of the maintenance, preventive maintenance, or alterations, to prepare—

(1) An airworthiness release; or

(2) An appropriate entry in the aircraft maintenance log.

(b) The airworthiness release or log entry required by paragraph (a) of this section must—

(1) Be prepared in accordance with the procedure in the certificate holder's manual;

(2) Include a certification that—

(i) The work was performed in accordance with the requirements of the certificate holder's manual;

(ii) All items required to be inspected were inspected by an authorized person who determined that the work was satisfactorily completed;

(iii) No known condition exists that would make the aircraft unairworthy;

(iv) So far as the work performed is concerned, the aircraft is in condition for safe operation; and

(3) Be signed by an authorized certificated mechanic or repairman, except that a certificated repairman may sign the release or entry only for the work for which that person is employed and for which that person is certificated.

(c) Instead of restating each of the conditions of the certification required by paragraph (b) of this section, the certificate holder may state in its manual that the signature of an authorized certificated mechanic or repairman constitutes that certification.

APPENDIX A

ADDITIONAL AIRWORTHINESS STANDARDS FOR 10 OR MORE PASSENGER AIRPLANES

Applicability

1. *Applicability.* This appendix prescribes the additional airworthiness standards required by § 135.169.

2. *References.* Unless otherwise provided, references in this appendix to specific sections of Part 23 of the Federal Aviation Regulations (FAR Part 23) are to those sections of Part 23 in effect on March 30, 1967.

Flight Requirements

3. *General.* Compliance must be shown with the applicable requirements of Subpart B of FAR Part 23, as supplemented or modified in §§ 4 through 10.

Performance

4. *General.* (a) Unless otherwise prescribed in this appendix, compliance with each applicable performance requirement in §§ 4 through 7 must be shown for ambient atmospheric conditions and still air.

(b) The performance must correspond to the propulsive thrust available under the particular ambient atmospheric conditions and the particular flight condition. The available propulsive thrust must correspond to engine power or thrust, not exceeding the approved power or thrust less—

(1) Installation losses; and

(2) The power or equivalent thrust absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(c) Unless otherwise prescribed in this appendix, the applicant must select the takeoff, en route, and landing configurations for the airplane.

(3) The airplane configuration may vary with weight, altitude, and temperature, to the extent they are compatible with the operating procedures required by paragraph (e) of this section.

(e) Unless otherwise prescribed in this appendix, in determining the critical engine inoperative takeoff performance, the accelerate-stop distance, takeoff distance, changes in the airplane's configuration, speed, power, and thrust must be made under procedures established by the applicant for operation in service.

(f) Procedures for the execution of balked landings must be established by the applicant and included in the Airplane Flight Manual.

(g) The procedures established under paragraphs (e) and (f) of this section must—

(1) Be able to be consistently executed in service by a crew of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

5. *Takeoff*—(a) *General.* Takeoff speeds, the accelerate-stop distance, the takeoff distance, and the one-engine-inoperative takeoff flight path data (described in paragraphs (b), (c), (d), and (f) of this section), must be determined for—

(1) Each weight, altitude, and ambient temperature within the operational limits selected by the applicant;

(2) The selected configuration for takeoff;

(3) The center of gravity in the most unfavorable position;

(4) The operating engine within approved operating limitations; and

(5) Takeoff data based on smooth, dry, hard-surface runway.

(b) *Takeoff speeds.* (1) The decision speed V_1 is the calibrated airspeed on the ground at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The speed V_1 must be selected by the applicant but may not be less than—

(i) $1.10V_{S1}$;

(ii) $1.10V_{MC}$;

(iii) A speed that allows acceleration to V_1 and stop under paragraph (c) of this section; or

(iv) A speed at which the airplane can be rotated for takeoff and shown to be adequate to safely continue the takeoff, using normal piloting skill, when the critical engine is suddenly made inoperative.

(2) The initial climb out speed V_2, in terms of calibrated airspeed, must be selected by the applicant so as to allow the gradient of climb required in § 6(b)(2), but it must not be less than V_1 or less than $1.2V_{S1}$.

(3) Other essential take off speeds necessary for safe operation of the airplane.

(c) *Accelerate-stop distance.* (1) The accelerate-stop distance is the sum of the distances necessary to—

(i) Accelerate the airplane from a standing start to V_1; and

(ii) Come to a full stop from the point at which V_1 is reached assuming that in the case of engine failure, failure of the critical engine is recognized by the pilot at the speed V_1.

(2) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means is available with the critical engine inoperative and—

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected under normal operating conditions; and

(iii) Is such that exceptional skill is not required to control the airplane.

(d) *All engines operating takeoff distance.* The all engine operating takeoff distance is the horizontal distance required to takeoff and climb to a height of 50 feet above the takeoff surface under the procedures in FAR 23.51(a).

(e) *One-engine-inoperative takeoff.* Determine the weight for each altitude and temperature within the operational limits established for the airplane, at which the airplane has the capability, after failure of the critical engine at V_1 determined under paragraph (b) of this section, to take off and climb at not less than V_2, to a height 1,000 feet above the takeoff surface and attain the speed and configuration at which compliance is shown with the en route one-engine-inoperative gradient of climb specified in § 6(c).

(f) *One-engine-inoperative takeoff flight path data.* The one-engine-inoperative takeoff flight path data consist of takeoff flight paths extending from a standing start to a point in the takeoff at which the airplane reaches a height 1,000 feet above the takeoff surface under paragraph (e) of this section.

6. *Climb*—(a) *Landing climb: All-engines-operating.* The maximum weight must be determined with the airplane in the landing configuration, for each altitude, and ambient temperature within the operational limits established for the airplane, with the most unfavorable center of gravity, and out-of-ground effect in free air, at which the steady gradient of climb will not be less than 3.3 percent, with:

(1) The engines at the power that is available 8 seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the takeoff position.

(2) A climb speed not greater than the approach speed established under § 7 and not less than the greater of $1.05V_{MC}$ or $1.10V_{S1}$.

(b) *Takeoff climb: one-engine-inoperative.* The maximum weight at which the airplane meets the minimum climb performance specified in subparagraphs (1) and (2) of this paragraph must be determined for each altitude and ambient temperature within the operational limits established for the airplane, out of ground effect in free air, with the airplane in the takeoff configuration, with the most unfavorable center of gravity, the critical engine inoperative, the remaining engines at the maximum takeoff power or thrust, and the propeller of the inoperative engine windmilling with the propeller controls in the normal position except that, if an approved automatic feathering system is installed, the propellers may be in the feathered position:

(1) *Takeoff: landing gear extended.* The minimum steady gradient of climb must be measurably positive at the speed V_2.

(2) *Takeoff: landing gear retracted.* The minimum steady gradient of climb may not be less than 2 percent at speed V_2. For airplanes with fixed landing gear this requirement must be met with the landing gear extended.

(c) *En route climb: one-engine-inoperative.* The maximum weight must be determined for each altitude and ambient temperature within the operational limits established for the airplane, at which the steady gradient of climb is not less 1.2 percent at an altitude 1,000 feet above the takeoff surface, with the airplane in the en route configuration, the critical engine inoperative, the remaining engine at the maximum continuous power or thrust, and the most unfavorable center of gravity.

7. *Landing.* (a) The landing field length described in paragraph (b) of this section must be determined for standard atmosphere at each weight and altitude within the operational limits established by the applicant.

(b) The landing field length is equal to the landing distance determined under FAR 23.75(a) divided by a factor of 0.6 for the destination airport and 0.7 for the alternate airport. Instead of the gliding approach specified in FAR 23.75(a)(1), the landing may be preceded by a steady approach down to the 50-foot height at a gradient of descent not greater than 5.2 percent (3°) at a calibrated airspeed not less than $1.3V_{S1}$.

Trim

8. *Trim*—(a) *Lateral and directional trim.* The airplane must maintain lateral and directional trim in level flight at a speed of V_H or V_{MO}/M_{MO}, whichever is lower, with landing gear and wing flaps retracted.

(b) *Longitudinal trim.* The airplane must maintain longitudinal trim during the following conditions, except that it need not maintain trim at a speed greater than V_{MO}/M_{MO}:

(1) In the approach conditons specified in FAR 23.161(c) (3) through (5), except that instead of the speeds specified in those paragraphs, trim must be maintained with a stick force of not more than 10 pounds down to a speed used in showing compliance with § 7 or $1.4V_{S1}$ whichever is lower.

(2) In level flight at any speed from V_H or V_{MO}/M_{MO}, whichever is lower, to either V_z or $1.4V_{S1}$, with the landing gear and wing flaps retracted.

Stability

9. *Static longitudinal stability.* (a) In showing compliance with FAR 23.175(b) and with paragraph (b) of this section, the airspeed must return to within ±7½ percent of the trim speed.

(b) *Cruise stability.* The stick force curve must have a stable slope for a speed range of ±50 knots from the trim speed except that the speeds need not exceed V_{FC}/M_{FC} or be less than $1.4V_{S1}$. This speed range will be considered to begin at the outer extremes of the friction band and the stick force may not exceed 50 pounds with—

(1) Landing gear retracted;
(2) Wing flaps retracted;
(3) The maximum cruising power as selected by the applicant as an operating limitation for turbine engines or 75 percent of maximum continuous power for reciprocating engines except that the power need not exceed that required at V_{MO}/M_{MO};
(4) Maximum takeoff weight; and
(5) The airplane trimmed for level flight with the power specified in subparagraph (3) of this paragraph.

V_{FC}/M_{FC} may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF}, except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

(c) *Climb stability (turbopropeller powered airplanes only).* In showing compliance with FAR 23.175(a), an applicant must, instead of the power specified in FAR 23.175(a)(4), use the maximum power or thrust selected by the applicant as an operating limitation for use during climb at the best rate of climb speed, except that the speed need not be less than $1.4V_{S1}$.

Stalls

10. *Stall warning.* If artificial stall warning is required to comply with FAR 23.207, the warning device must give clearly distinguishable indications under expected conditions of flight. The use of a visual warning device that requires the attention of the crew within the cockpit is not acceptable by itself.

Control systems

11. *Electric trim tabs.* The airplane must meet FAR 23.677 and in addition it must be shown that the airplane is safely controllable and that a pilot can perform all the maneuvers and operations necessary to effect a safe landing following any probable electric trim tab runaway which might be reasonably expected in service allowing for appropriate time delay after pilot recognition of the runaway. This demonstration must be conducted at the critical airplane weights and center of gravity positions.

Instruments: Installation

12. *Arrangement and visibility.* Each instrument must meet FAR 23.1321 and in addition:
(a) Each flight, navigation, and powerplant instrument for use by any pilot must be plainly visible to the pilot from the pilot's station with the minimum practicable deviation from the pilot's normal position and line of vision when the pilot is looking forward along the flight path.
(b) The flight instruments required by FAR 23.1303 and by the applicable operating rules must be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of each pilot's forward vision. In addition—
(1) The instrument that most effectively indicates the attitude must be in the panel in the top center position;
(2) The instrument that most effectively indicates the airspeed must be on the panel directly to the left of the instrument in the top center position;
(3) The instrument that most effectively indicates altitude must be adjacent to and directly to the right of the instrument in the top center position; and
(4) The instrument that most effectively indicates direction of flight must be adjacent to and directly below the instrument in the top center position.

13. *Airspeed indicating system.* Each airspeed indicating system must meet FAR 23.1323 and in addition:
(a) Airspeed indicating instruments must be of an approved type and must be calibrated to indicate true airspeed at sea level in the standard atmosphere with a minimum practicable instrument calibration error when the corresponding pitot and static pressures are supplied to the instruments.
(b) The airspeed indicating system must be calibrated to determine the system error, i.e., the relation between IAS and CAS, in flight and during the accelerate-takeoff ground run. The ground run calibration must be obtained between 0.8 of the minimum value of V_1 and 1.2 times the maximum value of V_1, considering the approved ranges of altitude and weight. The ground run calibration is determined assuming an engine failure at the minimum value of V_1.
(c) The airspeed error of the installation excluding the instrument calibration error, must not exceed 3 percent or 5 knots whichever is greater, throughout the speed range from V_{MO} to $1.3V_{S1}$ with flaps retracted and from $1.3V_{SO}$ to V_{FE} with flaps in the landing position.
(d) Information showing the relationship between IAS and CAS must be shown in the Airplane Flight manual.

14. *Static air vent system.* The static air vent system must meet FAR 23.1325. The altimeter system calibration must be determined and shown in the Airplane Flight Manual.

Operating Limitations and Information

15. *Maximum operating limit speed V_{MO}/M_{MO}.* Instead of establishing operating limitations based on V_{NE} and V_{NO}, the applicant must establish a maximum operating limit speed V_{MO}/M_{MO} as follows:
(a) The maximum operating limit speed must not exceed the design cruising speed V_C and must be sufficiently below V_D/M_D or V_{DF}/M_{DF} to make it highly improbable that the latter speeds will be inadvertently exceeded in flight.
(b) The speed V_{MO} must not exceed $0.8V_D/M_D$ or $0.8V_{DF}/M_{DF}$ unless flight demonstrations involving upsets as specified by the Administrator indicates a lower speed margin will not result in speeds exceeding V_D/M_D or V_{DF}. Atmospheric variations, horizontal gusts, system and equipment errors, and airframe production variations are taken into account.

16. *Minimum flight crew.* In addition to meeting FAR 23.1523, the applicant must establish the minimum number and type of qualified flight crew personnel sufficient for safe operation of the airplane considering—
(a) Each kind of operation for which the applicant desires approval;
(b) The workload on each crewmember considering the following:
(1) Flight path control.
(2) Collision avoidance.
(3) Navigation.
(4) Communications.
(5) Operation and monitoring of all essential aircraft systems.
(6) Command decisions; and
(c) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight station.

17. *Airspeed indicator.* The airspeed indicator must meet FAR 23.1545 except that, the airspeed notations and markings in terms of V_{SO} and V_{SR} must be replaced by the V_{MO}/M_{MO} notations. The airspeed indicator markings must be easily read and understood by the pilot. A placard adjacent to the airspeed indicator is an acceptable means of showing compliance with FAR 23.1545(c).

Airplane Flight Manual

18. *General.* The Airplane Flight Manual must be prepared under FARs 23.1583 and 23.1587, and in addition the operating limitations and performance information in §§ 19 and 20 must be included.

19. *Operating limitations.* The Airplane Flight Manual must include the following limitations—
(a) *Airspeed limitations.* (1) The maximum operating limit speed V_{MO}/M_{MO} and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training;
(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and informaton as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures; and
(3) The airspeed limits, shown in terms of V_{MO}/M_{MO} instead of V_{NO} and V_{NE}.
(b) *Takeoff weight limitations.* The maximum takeoff weight for each airport elevation, ambient temperature, and available takeoff runway length within the range selected by the applicant may not exceed the weight at which—
(1) The all-engine-operating takeoff distance determined under § 5(b) or the accelerate-stop distance determined under § 5(c), whichever is greater, is equal to the available runway length;
(2) The airplane complies with the one-engine-inoperative takeoff requirements specified in § 5(e); and
(3) The airplane complies with the one-engine-inoperative takeoff and en route climb requirements specified in §§ 6 (b) and (c).
(c) *Landing weight limitations.* The maximum landing weight for each airport elevation (standard temperature) and available landing runway length, within the range selected by the applicant. This weight may not exceed the weight at which the landing field length determined under § 7(b) is equal to the available runway length. In showing compliance with this operating limitation, it is acceptable to assume that the landing weight at the destination will be equal to the takeoff weight reduced by the normal consumption of fuel and oil en route.

20. *Performance information.* The Airplane Flight Manual must contain the performance information determined under the performance requirements of this appendix. The information must include the following:
(a) Sufficient information so that the takeoff weight limits specified in § 19(b) can be determined for all temperatures and altitudes within the operation limitations selected by the applicant.
(b) The conditions under which the performance information was obtained, including the airspeed at the 50-foot height used to determine landing distances.
(c) The performance information (determined by extrapolation and computed for the range of weights between the maximum landing and takeoff weights) for—

(1) Climb in the landing configuration; and

(2) Landing distance.

(d) Procedure established under § 4 related to the limitations and information required by this section in the form of guidance material including any relevant limitations or information.

(e) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

(f) Airspeeds, as indicated airspeeds, corresponding to those determined for takeoff under § 5(b).

21. *Maximum operating altitudes.* The maximum operating altitude to which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be specified in the Airplane Flight Manual.

22. *Stowage provision for airplane flight manual.* Provision must be made for stowing the Airplane Flight Manual in a suitable fixed container which is readily accessible to the pilot.

23. *Operating procedures.* Procedures for restarting turbine engines in flight (including the effects of altitude) must be set forth in the Airplane Flight Manual.

Airframe Requirements

Flight Loads

24. *Engine Torque.* (a) Each turbopropeller engine mount and its supporting structure must be designed for the torque effects of:

(1) The conditions in FAR 23.361(a).

(2) The limit engine torque corresponding to takeoff power and propeller speed multiplied by a factor accounting for propeller control system malfunction, including quick feathering action, simultaneously with 1*g* level flight loads. In the absence of a rational analysis, a factor of 1.6 must be used.

(b) The limit torque is obtained by multiplying the mean torque by a factor of 1.25.

25. *Turbine engine gyroscopic loads.* Each turbopropeller engine mount and its supporting structure must be designed for the gyroscopic loads that result, with the engines at maximum continuous r.p.m., under either—

(a) The conditions in FARs 23.351 and 23.423; or

(b) All possible combinations of the following:

(1) A yaw velocity of 2.5 radians per second.

(2) A pitch velocity of 1.0 radians per second.

(3) A normal load factor of 2.5.

(4) Maximum continuous thrust.

26. *Unsymmetrical loads due to engine failure.* (a) Turbopropeller powered airplanes must be designed for the unsymmetrical loads resulting from the failure of the critical engine including the following conditions in combination with a single malfunction of the propeller drag limiting system, considering the probable pilot corrective action on the flight controls:

(1) At speeds between V_{mo} and V_D, the loads resulting from power failure because of fuel flow interruption are considered to be limit loads.

(2) At speeds between V_{mo} and V_C, the loads resulting from the disconnection of the engine compressor from the turbine or from loss of the turbine blades are considered to be ultimate loads.

(3) The time history of the thrust decay and drag buildup occurring as a result of the prescribed engine failures must be substantiated by test or other data applicable to the particular engine-propeller combination.

(4) The timing and magnitude of the probable pilot corrective action must be conservatively estimated, considering the characteristics of the particular engine-propeller-airplane combination.

(b) Pilot corrective action may be assumed to be initiated at the time maximum yawing velocity is reached, but not earlier than 2 seconds after the engine failure. The magnitude of the corrective action may be based on the control forces in FAR 23.397 except that lower forces may be assumed where it is shown by analysis or test that these forces can control the yaw and roll resulting from the prescribed engine failure conditions.

Ground Loads

27. *Dual wheel landing gear units.* Each dual wheel landing gear unit and its supporting structure must be shown to comply with the following:

(a) *Pivoting.* The airplane must be assumed to pivot about one side of the main gear with the brakes on that side locked. The limit vertical load factor must be 1.0 and the coefficient of friction 0.8. This condition need apply only to the main gear and its supporting structure.

(b) *Unequal tire inflation.* A 60–40 percent distribution of the loads established under FAR 23.471 through FAR 23.483 must be applied to the dual wheels.

(c) *Flat tire.* (1) Sixty percent of the loads in FAR 23.471 through FAR 23.483 must be applied to either wheel in a unit.

(2) Sixty percent of the limit drag and side loads and 100 percent of the limit vertical load established under FARs 23.493 and 23.485 must be applied to either wheel in a unit except that the vertical load need not exceed the maximum vertical load in paragraph (c)(1) of this section.

Fatigue Evaluation

28. *Fatigue evaluation of wing and associated structure.* Unless it is shown that the structure, operating stress levels, materials and expected use are comparable from a fatigue standpoint to a similar design which has had substantial satisfactory service experience, the strength, detail design, and the fabrication of those parts of the wing, wing carrythrough, and attaching structure whose failure would be catastrophic must be evaluated under either—

(a) A fatigue strength investigation in which the structure is shown by analysis, tests, or both to be able to withstand the repeated loads of variable magnitude expected in service; or

(b) A fail-safe strength investigation in which it is shown by analysis, tests, or both that catastrophic failure of the structure is not probable after fatigue, or obvious partial failure, of a principal structural element, and that the remaining structure is able to withstand a static ultimate load factor of 75 percent of the critical limit load factor at V_C. These loads must be multiplied by a factor of 1.15 unless the dynamic effects of failure under static load are otherwise considered.

Design and Construction

29. *Flutter.* For multiengine turbopropeller powered airplanes, a dynamic evaluation must be made and must include—

(a) The significant elastic, inertia, and aerodynamic forces associated with the rotations and displacements of the plane of the propeller; and

(b) Engine-propeller-nacelle stiffness and damping variations appropriate to the particular configuration.

Landing Gear

30. *Flap operated landing gear warning device.* Airplanes having retractable landing gear and wing flaps must be equipped with a warning device that functions continuously when the wing flaps are extended to a flap position that activates the warning device to give adequate warning before landing, using normal landing procedures, if the landing gear is not fully extended and locked. There may not be a manual shut off for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) provided for other landing gear warning devices.

Personnel and Cargo Accommodations

31. *Cargo and baggage compartments.* Cargo and baggage compartments must be designed to meet FAR 23.787 (a) and (b), and in addition means must be provided to protect passengers from injury by the contents of any cargo or baggage compartment when the ultimate forward inertia force is 9*g*.

32. *Doors and exits.* The airplane must meet FAR 23.783 and FAR 23.807 (a)(3), (b), and (c), and in addition:

(a) There must be a means to lock and safeguard each external door and exit against opening in flight either inadvertently by persons, or as a result of mechanical failure. Each external door must be operable from both the inside and the outside.

(b) There must be means for direct visual inspection of the locking mechanism by crewmembers to determine whether external doors and exits, for which the initial opening movement is outward, are fully locked. In addition, there must be a visual means to signal to crewmembers when normally used external doors are closed and fully locked.

(c) The passenger entrance door must qualify as a floor level emergency exit. Each additional required emergency exit except floor level exits must be located over the wing or must be provided with acceptable means to assist the occupants in descending to the ground. In addition to the passenger entrance door:

(1) For a total seating capacity of 15 or less, an emergency exit as defined in FAR 23.807(b) is required on each side of the cabin.

(2) For a total seating capacity of 16 through 23, three emergency exits as defined in FAR 23.807(b) are required with one on the same side as the door and two on the side opposite the door.

(d) An evacuation demonstration must be conducted utilizing the maximum number of occupants for which certification is desired. It must be conducted under simulated night conditions utilizing only the emergency exits on the most critical side of the aircraft. The participants must be representative of average airline passengers with no

previous practice or rehearsal for the demonstration. Evacuation must be completed within 90 seconds.

(e) Each emergency exit must be marked with the word "Exit" by a sign which has white letters 1 inch high on a red background 2 inches high, be self-illuminated or independently internally electrically illuminated, and have a minimum luminescence (brightness) of at least 160 microlamberts. The colors may be reversed if the passenger compartment illumination is essentially the same.

(f) Access to window type emergency exits must not be obstructed by seats or seat backs.

(g) The width of the main passenger aisle at any point between seats must equal or exceed the values in the following table:

Total seating capacity	Minimum main passenger aisle width	
	Less than 25 inches from floor	25 inches and more from floor
10 through 23	9 inches	15 inches.

Miscellaneous

33. *Lightning strike protection.* Parts that are electrically insulated from the basic airframe must be connected to it through lightning arrestors unless a lightning strike on the insulated part—

(a) Is improbable because of shielding by other parts; or

(b) Is not hazardous.

34. *Ice protection.* If certification with ice protection provisions is desired, compliance with the following must be shown:

(a) The recommended procedures for the use of the ice protection equipment must be set forth in the Airplane Flight Manual.

(b) An analysis must be performed to establish, on the basis of the airplane's operational needs, the adequacy of the ice protection system for the various components of the airplane. In addition, tests of the ice protection system must be conducted to demonstrate that the airplane is capable of operating safely in continuous maximum and intermittent maximum icing conditions as described in Appendix C of Part 25 of this chapter.

(c) Compliance with all or portions of this section may be accomplished by reference, where applicable because of similarity of the designs, to analysis and tests performed by the applicant for a type certificated model.

35. *Maintenance information.* The applicant must make available to the owner at the time of delivery of the airplane the information the applicant considers essential for the proper maintenance of the airplane. That information must include the following:

(a) Description of systems, including electrical, hydraulic, and fuel controls.

(b) Lubrication instructions setting forth the frequency and the lubricants and fluids which are to be used in the various systems.

(c) Pressures and electrical loads applicable to the various systems.

(d) Tolerances and adjustments necessary for proper functioning.

(e) Methods of leveling, raising, and towing.

(f) Methods of balancing control surfaces.

(g) Identification of primary and secondary structures.

(h) Frequency and extent of inspections necessary to the proper operation of the airplane.

(i) Special repair methods applicable to the airplane.

(j) Special inspection techniques, such as X-ray, ultrasonic, and magnetic particle inspection.

(k) List of special tools.

Propulsion

General

36. *Vibration characteristics.* For turbopropeller powered airplanes, the engine installation must not result in vibration characteristics of the engine exceeding those established during the type certification of the engine.

37. *In flight restarting of engine.* If the engine on turbopropeller powered airplanes cannot be restarted at the maximum cruise altitude, a determination must be made of the altitude below which restarts can be consistently accomplished. Restart information must be provided in the Airplane Flight Manual.

38. *Engines.* (a) *For turbopropeller powered airplanes.* The engine installation must comply with the following:

(1) *Engine isolation.* The powerplants must be arranged and isolated from each other to allow operation, in at least one configuration, so that the failure or malfunction of any engine, or of any system that can affect the engine, will not—

(i) Prevent the continued safe operation of the remaining engines; or

(ii) Require immediate action by any crewmember for continued safe operation.

(2) *Control of engine rotation.* There must be a means to individually stop and restart the rotation of any engine in flight except that engine rotation need not be stopped if continued rotation could not jeopardize the safety of the airplane. Each component of the stopping and restarting system on the engine side of the firewall, and that might be exposed to fire, must be at least fire resistant. If hydraulic propeller feathering systems are used for this purpose, the feathering lines must be at least fire resistant under the operating conditions that may be expected to exist during feathering.

(3) *Engine speed and gas temperature control devices.* The powerplant systems associated with engine control devices, systems, and instrumentation must provide reasonable assurance that those engine operating limitations that adversely affect turbine rotor structural integrity will not be exceeded in service.

(b) *For reciprocating engine powered airplanes.* To provide engine isolation, the powerplants must be arranged and isolated from each other to allow operation, in at least one configuration, so that the failure or malfunction of any engine, or of any system that can affect that engine, will not—

(1) Prevent the continued safe operation of the remaining engines; or

(2) Require immediate action by any crewmember for continued safe operation.

39. *Turbopropeller reversing systems.* (a) Turbopropeller reversing systems intended for ground operation must be designed so that no single failure or malfunction of the system will result in unwanted reverse thrust under any expected operating condition. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

(b) Turbopropeller reversing systems intended for in flight use must be designed so that no unsafe condition will result during normal operation of the system, or from any failure (or reasonably likely combination of failures) of the reversing system, under any anticipated condition of operation of the airplane. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

(c) Compliance with this section may be shown by failure analysis, testing, or both for propeller systems that allow propeller blades to move from the flight low-pitch position to a position that is substantially less than that at the normal flight low-pitch stop position. The analysis may include or be supported by the analysis made to show compliance with the type certification of the propeller and associated installation components. Credit will be given for pertinent analysis and testing completed by the engine and propeller manufacturers.

40. *Turbopropeller drag-limiting systems.* Turbopropeller drag-limiting systems must be designed so that no single failure or malfunction of any of the systems during normal or emergency operation results in propeller drag in excess of that for which the airplane was designed. Failure of structural elements of the drag-limiting systems need not be considered if the probability of this kind of failure is extremely remote.

41. *Turbine engine powerplant operating characteristics.* For turbopropeller powered airplanes, the turbine engine powerplant operating characteristics must be investigated in flight to determine that no adverse characteristics (such as stall, surge, or flameout) are present to a hazardous degree, during normal and emergency operation within the range of operating limitations of the airplane and of the engine.

42. *Fuel flow.* (a) For turbopropeller powered airplanes—

(1) The fuel system must provide for continuous supply of fuel to the engines for normal operation without interruption due to depletion of fuel in any tank other than the main tank; and

(2) The fuel flow rate for turbopropeller engine fuel pump systems must not be less than 125 percent of the fuel flow required to develop the standard sea level atmospheric conditions takeoff power selected and included as an operating limitation in the Airplane Flight Manual.

(b) For reciprocating engine powered airplanes, it is acceptable for the fuel flow rate for each pump system (main and reserve supply) to be 125 percent of the takeoff fuel consumption of the engine.

Fuel System Components

43. *Fuel pumps.* For turbopropeller powered airplanes, a reliable and independent power source must be provided for each pump used with turbine engines which do not have provisions for mechanically driving the main pumps. It must be demonstrated that the pump installations provide a reliability and durability equivalent to that in FAR 23.991(a).

44. *Fuel strainer or filter.* For turbopropeller powered airplanes, the following apply:

(a) There must be a fuel strainer or filter between the tank outlet and the fuel metering device of the engine. In addition, the fuel strainer or filter must be—

(1) Between the tank outlet and the engine-driven positive displacement pump inlet, if there is an engine-driven positive displacement pump;

(2) Accessible for drainage and cleaning and, for the strainer screen, easily removable; and

(3) Mounted so that its weight is not supported by the connecting lines or by the inlet or outlet connections of the strainer or filter itself.

(b) Unless there are means in the fuel system to prevent the accumulation of ice on the filter, there must be means to auto-

matically maintain the fuel-flow if ice-clogging of the filter occurs; and

(c) The fuel strainer or filter must be of adequate capacity (for operating limitations established to ensure proper service) and of appropriate mesh to insure proper engine operation, with the fuel contaminated to a degree (for particle size and density) that can be reasonably expected in service. The degree of fuel filtering may not be less than that established for the engine type certification.

45. *Lightning strike protection.* Protection must be provided against the ignition of flammable vapors in the fuel vent system due to lightning strikes.

Cooling

46. *Cooling test procedures for turbopropeller powered airplanes.* (a) Turbopropeller powered airplanes must be shown to comply with FAR 23.1041 during takeoff, climb, en route, and landing stages of flight that correspond to the applicable performance requirements. The cooling tests must be conducted with the airplane in the configuration, and operating under the conditions that are critical relative to cooling during each stage of flight. For the cooling tests a temperature is "stabilized" when its rate of change is less than 2° F. per minute.

(b) Temperatures must be stabilized under the conditions from which entry is made into each stage of flight being investigated unless the entry condition is not one during which component and engine fluid temperatures would stabilize, in which case, operation through the full entry condition must be conducted before entry into the stage of flight being investigated to allow temperatures to reach their natural levels at the time of entry. The takeoff cooling test must be preceded by a period during which the powerplant component and engine fluid temperatures are stabilized with the engines at ground idle.

(c) Cooling tests for each stage of flight must be continued until—

(1) The component and engine fluid temperatures stabilize;

(2) The stage of flight is completed; or

(3) An operating limitation is reached.

Induction System

47. *Air induction.* For turbopropeller powered airplanes—

(a) There must be means to prevent hazardous quantities of fuel leakage or overflow from drains, vents, or other components of flammable fluid systems from entering the engine intake systems; and

(b) The air inlet ducts must be located or protected so as to minimize the ingestion of foreign matter during takeoff, landing, and taxiing.

48. *Induction system icing protection.* For turbopropeller powered airplanes, each turbine engine must be able to operate throughout its flight power range without adverse effect on engine operation or serious loss of power or thrust, under the icing conditions specified in Appendix C of Part 25 of this chapter. In addition, there must be means to indicate to appropriate flight crewmembers the functioning of the powerplant ice protection system.

49. *Turbine engine bleed air systems.* Turbine engine bleed air systems of turbopropeller powered airplanes must be investigated to determine—

(a) That no hazard to the airplane will result if a duct rupture occurs. This condition must consider that a failure of the duct can occur anywhere between the engine port and the airplane bleed service; and

(b) That, if the bleed air system is used for direct cabin pressurization, it is not possible for hazardous contamination of the cabin air system to occur in event of lubrication system failure.

Exhaust System

50. *Exhaust system drains.* Turbopropeller engine exhaust systems having low spots or pockets must incorporate drains at those locations. These drains must discharge clear of the airplane in normal and ground attitudes to prevent the accumulation of fuel after the failure of an attempted engine start.

Powerplant Controls and Accessories

51. *Engine controls.* If throttles or power levers for turbopropeller powered airplanes are such that any position of these controls will reduce the fuel flow to the engine(s) below that necessary for satisfactory and safe idle operation of the engine while the airplane is in flight, a means must be provided to prevent inadvertent movement of the control into this position. The means provided must incorporate a positive lock or stop at this idle position and must require a separate and distinct operation by the crew to displace the control from the normal engine operating range.

52. *Reverse thrust controls.* For turbopropeller powered airplanes, the propeller reverse thrust controls must have a means to prevent their inadvertent operation. The means must have a positive lock or stop at the idle position and must require a separate and distinct operation by the crew to displace the control from the flight regime.

53. *Engine ignition systems.* Each turbopropeller airplane ignition system must be considered an essential electrical load.

54. *Powerplant accessories.* The powerplant accessories must meet FAR 23.1163, and if the continued rotation of any accessory remotely driven by the engine is hazardous when malfunctioning occurs, there must be means to prevent rotation without interfering with the continued operation of the engine.

Powerplant Fire Protection

55. *Fire detector system.* For turbopropeller powered airplanes, the following apply:

(a) There must be a means that ensures prompt detection of fire in the engine compartment. An overtemperature switch in each engine cooling air exit is an acceptable method of meeting this requirement.

(b) Each fire detector must be constructed and installed to withstand the vibration, inertia, and other loads to which it may be subjected in operation.

(c) No fire detector may be affected by any oil, water, other fluids, or fumes that might be present.

(d) There must be means to allow the flight crew to check, in flight, the functioning of each fire detector electric circuit.

(e) Wiring and other components of each fire detector system in a fire zone must be at least fire resistant.

56. *Fire protection, cowling and nacelle skin.* For reciprocating engine powered airplanes, the engine cowling must be designed and constructed so that no fire originating in the engine compartment can enter either through openings or by burn through, any other region where it would create additional hazards.

57. *Flammable fluid fire protection.* If flammable fluids or vapors might be liberated by the leakage of fluid systems in areas other than engine compartments, there must be means to—

(a) Prevent the ignition of those fluids or vapors by any other equipment; or

(b) Control any fire resulting from that ignition.

Equipment

58. *Powerplant instruments.* (a) The following are required for turbopropeller airplanes:

(1) The instruments required by FAR 23.1305(a) (1) through (4), (b) (2) and (4).

(2) A gas temperature indicator for each engine.

(3) Free air temperature indicator.

(4) A fuel flowmeter indicator for each engine.

(5) Oil pressure warning means for each engine.

(6) A torque indicator or adequate means for indicating power output for each engine.

(7) Fire warning indicator for each engine.

(8) A means to indicate when the propeller blade angle is below the low-pitch position corresponding to idle operation in flight.

(9) A means to indicate the functioning of the ice protection system for each engine.

(b) For turbopropeller powered airplanes, the turbopropeller blade position indicator must begin indicating when the blade has moved below the flight low-pitch position.

(c) The following instruments are required for reciprocating engine powered airplanes:

(1) The instruments required by FAR 23.1305.

(2) A cylinder head temperature indicator for each engine.

(3) A manifold pressure indicator for each engine.

Systems and Equipments

General

59. *Function and installation.* The systems and equipment of the airplane must meet FAR 23.1301, and the following:

(a) Each item of additional installed equipment must—

(1) Be of a kind and design appropriate to its intended function;

(2) Be labeled as to its identification, function, or operating limitations, or any applicable combination of these factors, unless misuse or inadvertent actuation cannot create a hazard;

(3) Be installed according to limitations specified for that equipment; and

(4) Function properly when installed.

(b) Systems and installations must be designed to safeguard against hazards to the aircraft in the event of their malfunction or failure.

(c) Where an installation, the functioning of which is necessary in showing compliance with the applicable requirements, requires a power supply, that installation must be considered an essential load on the power supply, and the power sources and the distribution system must be capable of supplying the following power loads in probable operation combinations and for probable durations:

(1) All essential loads after failure of any prime mover, power converter, or energy storage device.

(2) All essential loads after failure of any one engine on two-engine airplanes.

(3) In determining the probable operating combinations and durations of essential loads for the power failure conditions described in subparagraphs (1) and (2) of this paragraph, it is permissible to assume that the power loads are reduced in accordance with a monitoring procedure which is consistent with safety in the types of operations authorized.

60. *Ventilation.* The ventilation system of the airplane must meet FAR 23.831, and in addition, for pressurized aircraft, the ventilating air in flight crew and passenger compartments must be free of harmful or haz-

ardous concentrations of gases and vapors in normal operation and in the event of reasonably probable failures or malfunctioning of the ventilating, heating, pressurization, or other systems, and equipment. If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished.

Electrical Systems and Equipment

61. *General.* The electrical systems and equipment of the airplane must meet FAR 23.1351, and the following:

(a) *Electrical system capacity.* The required generating capacity, and number and kinds of power sources must—

(1) Be determined by an electrical load analysis; and

(2) Meet FAR 23.1301.

(b) *Generating system.* The generating system includes electrical power sources, main power busses, transmission cables, and associated control, regulation and protective devices. It must be designed so that—

(1) The system voltage and frequency (as applicable) at the terminals of all essential load equipment can be maintained within the limits for which the equipment is designed, during any probable operating conditions;

(2) System transients due to switching, fault clearing, or other causes do not make essential loads inoperative, and do not cause a smoke or fire hazard;

(3) There are means, accessible in flight to appropriate crewmembers, for the individual and collective disconnection of the electrical power sources from the system; and

(4) There are means to indicate to appropriate crewmembers the generating system quantities essential for the safe operation of the system, including the voltage and current supplied by each generator.

62. *Electrical equipment and installation.* Electrical equipment, controls, and wiring must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to the safe operation.

63. *Distribution system.* (a) For the purpose of complying with this section, the distribution system includes the distribution busses, their associated feeders, and each control and protective device.

(b) Each system must be designed so that essential load circuits can be supplied in the event of reasonably probable faults or open circuits, including faults in heavy current carrying cables.

(c) If two independent sources of electrical power for particular equipment or systems are required under this appendix, their electrical energy supply must be ensured by means such as duplicate electrical equipment, throwover switching, or multichannel or loop circuits separately routed.

64. *Circuit protective devices.* The circuit protective devices for the electrical circuits of the airplane must meet FAR 23.1357, and in addition circuits for loads which are essential to safe operation must have individual and exclusive circuit protection.

REFERENCE TABLE

New section No.	Old section No.
Subpart A—General	
135.1	135.1
135.2	135.2
135.3	135.3
	135.5 [Deleted]
135.5	135.9
135.7	New
135.9	135.11
135.10	New
135.11	135.13
135.13	135.15
135.15	135.17
135.17	135.19
135.19	135.7
135.21	135.27
135.23	New
135.25	135.31
135.27	135.41
135.29	135.47
135.31	135.45
135.33	135.69
135.35	135.51
135.37	New
135.39	New
135.41	135.12
135.43	New
Subpart B—Flight Operations	
135.61	135.61
135.63	135.43
135.65	135.119
135.67	New
135.69	New
135.71	135.67
135.73	135.49
135.75	New
135.77	New
135.79	135.29
135.81	135.39
135.83	135.71
135.85	135.63
135.87	135.117
135.89	135.83
135.91	135.114
135.93	135.79
135.95	135.33
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135.99	135.52
135.101	135.73
135.103	135.75
135.105	135.77
135.107	135.54
135.109	135.35
135.111	135.72
135.113	135.53
135.115	New
135.117	135.81
135.119	135.64
135.121	135.115
	135.89 [Deleted]
135.123	New
Subpart C—Aircraft and Equipment	
135.141	135.141
135.143	135.143
135.145	135.32
135.147	135.149
135.149	135.151
135.151	New
135.153	New
135.155	135.161
135.157	135.165
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135.161	135.157
135.163	135.155
135.165	135.159
135.167	135.163
135.169	135.144
135.171	New
135.173	New
135.175	New
135.177	New
135.179	New
135.181	135.145
135.183	135.147
135.185	135.167
Subpart D—VFR/IFR Operating Limitations and Weather Requirements	
135.201	New
135.203	135.91
135.205	135.93
135.207	135.95
135.209	135.97
135.211	135.99
135.213	135.65
135.215	135.101
135.217	135.103
135.219	135.105
135.221	135.109
135.223	135.107
135.225	135.111
135.227	135.85
135.229	135.87
Subpart E—Flight Crewmember Requirements	
135.241	New
135.243	135.121/123
135.245	135.127
135.247	New
Subpart F—Flight Crewmember Flight and Duty Time Limitations	
135.261	135.136
Subpart G—Crewmember Testing Requirements	
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135.299	135.122
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135.303	135.135
Subpart H—Training	
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135.323	New
135.325	New
135.327	New
135.329	New
135.331	New
135.333	135.140
135.335	New
135.337	New
135.339	New
135.341	135.55
135.343	135.137
135.345	New
135.347	New
135.349	New
135.351	New
Subpart I—Airplane Performance Operating Limitations	
135.361	New
135.363	New
135.365	New
135.367	New
135.369	New
135.371	New
135.373	New
135.375	New
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135.399	135.148
Subpart J—Maintenance, Preventive Maintenance, and Alterations	
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135.419	135.60
135.421	New
135.423	New
135.425	New
135.427	New
135.429	New
135.431	New
135.433	New
135.435	New
135.437	New
135.439	New
135.441	New
135.443	New

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355(a), 1421 through 1430, and 1502); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

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LANGHORNE BOND,
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