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WEDNESDAY, OCTOBER 25, 1978

highlights

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WHERE: University of Tennessee at Nashville, 10th and Charlotte, Room 358, Nashville, Tennessee.
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To incorporate the United States Capitol Historical Society. (Oct. 20, 1978; 92 Stat. 1643). Price: $.70

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[3195-01-M]

Title 3—The President

Executive Order 12089 • **October 23, 1978**

National Productivity Council

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for coordinated and effective Federal programs to improve productivity in the public and private sectors, it is hereby ordered as follows:

1-1. *Establishment of the Council.*

1-101. There is established the National Productivity Council.

1-102. The Council will be composed of the heads of the following agencies, or a designated representative, and such others as the President may designate:

(a) Department of the Treasury.

(b) Department of Commerce.

(c) Department of Labor.

(d) Office of the Special Representative for Trade Negotiations.

(e) Council of Economic Advisers.

(f) Office of Management and Budget.

(g) Office of Science and Technology Policy.

(h) Council on Environmental Quality.

(i) Civil Service Commission, and

(j) Council on Wage and Price Stability.

1-103. The Director of the Office of Management and Budget will serve as Chairman of the Council.

1-2. *Functions of the Council.*

1-201. The Council will work with Executive agencies to assure that activities designed to improve productivity in the private and public sectors are carried out in a manner that realizes maximum benefit from the resources invested. As part of this responsibility the Council will identify opportunities for cooperative or innovative projects to be undertaken by the agencies, as well as overlapping or duplicative programs which should be eliminated.

1-202. The Council will identify issues pertaining to private and public sector productivity and productivity improvement, and will make assignments to Council members or other Executive agencies for studying and resolving the issues.

1-203. The Council will identify major policy issues with productivity implications for consideration by the President, including the need for legislative initiatives.

1-204. The Council will serve as the focal point within the Executive Branch for liaison with elements of the private sector concerned with improving productivity, and will seek the advice and assistance of business, labor, and academic leaders, as well as representatives from State and local governments and others concerned with productivity.

1-205. The Council will serve as the focal point within the Executive Branch for liaison with organizations of foreign governments involved in efforts to improve productivity.

1-3. *Administrative Provisions.*

1-301. Executive agencies shall cooperate with and assist the Council in performing its functions.

1-302. The Chairman shall be responsible for providing the Council with such administrative services and support as may be necessary or appropriate.

1-303. The Chairman may establish working groups or subcommittees of the Council. The Chairman may invite representatives of nonmember agencies to participate from time to time in the functions of the Council.

1-304. The Chairman shall report to the President on the performance of the Council's functions.

Jimmy Carter

THE WHITE HOUSE,
October 23, 1978.

[FR Doc. 78-30299 Filed 10-23-78; 2:45 pm]

rules and regulations

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

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

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Revocation of Certain Reporting Requirements

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulation "Domestic Licensing of Production and Utilization Facilities" to revoke two reporting requirements on antitrust information and to revoke a requirement for retention of 25 copies of the antitrust report during the antitrust review. These requirements are no longer needed.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

SUPPLEMENTARY INFORMATION: Paragraph (c) of § 50.33a requires that any person who applies for a construction permit for a nuclear power reactor prior to July 28, 1975, shall submit the document titled "Information Requested by the Attorney General for Antitrust Review" as soon as possible. This paragraph (c) is being revoked on the basis that all antitrust reports required by paragraph (c) have been submitted.

Section 50.55b requires antitrust reports as a condition of certain construction permits and operating licenses. Section 50.55b is being revoked on the basis that all antitrust reports that may be required as a condition of the construction permits or operating licenses specified in § 50.55b have been submitted.

The last sentence of the introduction of appendix L of 10 CFR Part 50 requires the applicant to retain not less than 25 additional copies of the document titled "Information Requested by the Attorney General for Antitrust Review," to be available as needed during the antitrust review. Experience to date indicates that the 25 additional copies are not needed in the event of an antitrust hearing. Accordingly, this requirement is being revoked as unnecessary.

Because these amendments relate solely to minor matters, good cause exists for omitting notice of proposed rulemaking, and public procedure thereon, as unnecessary. Since the amendments are of a relieving nature and do not impose obligations on persons other than the Nuclear Regulatory Commission, the Commission has found that good cause exists for making the amendments effective immediately without the customary 30-day notice.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

§ 50.33a [Amended]

1. Section 50.33a of 10 CFR Part 50 is amended by revoking paragraph (c).

§ 50.55b [Revoked]

2. Section 50.55b of 10 CFR Part 50 is revoked.

3. The introduction of appendix L of 10 CFR Part 50 is amended by deleting the words "and not less that twenty-five (25) additional copies shall be retained by the applicant to be available as needed during the antitrust review," to read as follows:

* * * * *

APPENDIX L—INFORMATION REQUESTED BY THE ATTORNEY GENERAL FOR ANTITRUST REVIEW FACILITY LICENSE APPLICATIONS

Introduction. The information in this appendix is that requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants. The applicant shall submit the information as a separate document titled, "Information Requested by the Attorney General for Antitrust Review." Twenty (20) copies shall be submitted prior to any other part of the facility license application as provided in § 50.33a and in accordance with § 2.101 of this chapter.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Bethesda, Md., this 13th day of October 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-28207 Filed 10-24-78; 8:45 am]

[3128-01-M]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

Interpretations and Rulings

AGENCY: Department of Energy.

ACTION: Notice of indexes for interpretations and rulings.

SUMMARY: Attached are indexes to all interpretations and rulings issued by the General counsel (or his delegate) of the Department of Energy or predecessor agencies through October 1, 1978.

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 ("Interpretations"), are published from time to time in the FEDERAL REGISTER in accordance with editorial and classification criteria set forth in 42 FR 7923,

[1] 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.

February 8, 1977, as modified in 42 FR 46270, September 15, 1977. Interpretations have been published as indicated in the following table.

1974-1 through 1974-29: 42 FR 25648, May 18, 1977.
1975-1 through 1975-74: 42 FR 23722, May 10, 1977.
1976-1 through 1976-23: 42 FR 7923, February 8, 1977.
1976-24: 42 FR 10963, February, 25, 1977.
1976-25: 42 FR 23722, May 10, 1977.
1977-1 through 1977-5: 42 FR 10963, February 25, 1977.
1977-6: 42 FR 17100, March 31, 1977.
1977-7 through 1977-16: 42 FR 31143, June 20, 1977.
1977-17 through 1977-21: 42 FR 39959, August 8, 1977.
1977-22 through 1977-27: 42 FR 41095, August 13, 1977.
1977-28 through 1977-33: 42 FR 46270, September 15, 1977.
1977-34 through 1977-38: 42 FR 54268, October 5, 1977.
1977-39 through 1977-44: 42 FR 61271, December 2, 1977.[2]
1977-45 through 1977-53: 42 FR 1479, January 10, 1978.
1978-1: 43 FR 5797, February 10, 1978.
1978-2 through 1978-5: 43 FR 12848, March 28, 1978.
1978-6 through 1978-10: 43 FR 15617, April 14, 1978.
1978-11 through 1978-21: 43 FR 19817, May 9, 1978.
1978-22 through 1978-28: 43 FR 25079, June 9, 1978.
1978-29 through 1978-42: 43 FR 29528, July 10, 1978.
1978-43 through 1978-47: 43 FR 34433, August 4, 1978.
1978-48 through 1978-56: 43 FR 40200, September 11, 1978.
1978-57 through 1978-59: 43 FR 46517, October 10, 1978.

The appendices to today's notice provide an updated comprehensive index system covering all of the published Interpretations and Rulings issued by FEO/FEA/DOE through October 1, 1978. Previously published indexes have appeared at 43 FR 1613, January 11, 1978, and 43 FR 17337, April 24, 1978. A total of 299 Interpretations and Rulings are covered by the indexes published today.

Appendix A provides an alphabetical listing of the firms or persons to whom or on whose behalf Interpretations have been issued, while Appendix B lists Rulings in chronological order of issuance by number and title. Appendix C contains an index of Interpretations and Rulings according to informal subject entries, such as "Base Period Supplier," "Class of Purchaser," "Stripper Well Lease Exemption," etc. Interpretations and Rulings are indexed in Appendix D according to the regulation sections which they interpret. Appendix E provides an index of Rulings construed by Interpretations, and Appendix F contains a list of statutes construed by Interpretations and Rulings.

[2](Correction Notice) 1977-42: 43 FR 64104, Dec. 22, 1977.

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 addressed and other persons upon 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 to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, Interpretations are subject to reconsideration by the General Counsel (§ 205.85(f)). The Interpretations indexed herein have been published only for the general guidance in accordance with the reasons set forth in the FEA Notice first cited above.

Issued in Washington, D.C., October 20, 1978.

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

APPENDIX A.—*Alphabetical Listing of Interpretations Issued Through Sept. 30, 1978*

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Moore-McCormack Resources, Inc	75-44
Murphy Oil Corp	75-16
National Airlines, Inc	77-11
National Association of Texaco Consignees, Inc	75-19
National Convenience Stores, Inc	74-25
Do	76-11
National Cooperative Refinery Association	78-52
National Institute of Infant Services	75-39
National Life and Accident Insurance Co	74-24
Navajo Refining Co	77-26
Nelson Oil Co	77-41
Do	78-24
Northeast Petroleum Corp	75-22
Oil Transit Corp	77-35
Oregon Department of Transportation	75-18
Owsley, J. M	77-27
Pacemaster, Inc	75-47
Pacific Lighting Exploration Co	75-27
Paine, Joseph J. C. & Associates	77-37
Pan American World Airways, Inc	75-26
Pasco, Inc	75-7
Do	78-38
Peerless Distributing Co	77-29
Pennzoil Co	78-11
Pennzoil Offshore Gas Operators, Inc	78-17
Permian Corp	78-12
Do	78-45
Peters, B. R. Inc	75-38
Petrolane, Inc	76-18
Petroleum, Inc	75-42
Petro US, Inc	74-20
Phillips Petroleum Co	75-5
Do	77-12
Pleasant Street Co	75-55
Portable Sanitation Association	74-1
Pru Lease, Inc	74-23
Public Service Commission of Delaware	78-4
Pyrofax Gas Corp	77-4
Rookwood Oil Terminals, Inc	76-8
Rotary Gasoline Dealers	75-48
Rounds, Don M. Co	75-42
Rustex Oil, Inc	78-5
Ryall, E. E	78-59
Saber Petroleum Corp	76-7
Scarpulla, Frances O., Esq	77-17
Sea Horse Marine, Inc	77-22
Shell Oil Co	75-4
Do	75-21
Do	76-15
Do	78-2
Do	78-42
Do	78-50
Shields, Herman F	75-67
Signal Oil and Gas Co	74-4
Signore, Anna, Estate of	75-58
Simmons Oil Corp	75-61
Skelly Oil Co	75-1
Sky Harbor Air Services, Inc	74-15
Sohio	76-17
Sohio-BP Oil, Inc	76-3
Sound Refining, Inc	74-2
Southern Gulf Oil Distributors Association, Inc	75-13
Southern Union Gas Co	78-34
Spartan Petroleum Co	78-30
Standard Oil Co. (Indiana)	74-10
Do	77-43

APPENDIX A.—*Alphabetical Listing of Interpretations Issued Through Sept. 30, 1978*—Continued

Issued to	Interpretation
Do	78-50
Sterling Stations, Inc	77-19
Stevenson, Warren	78-46
Suburban Propane Gas Corp	77-21
Sun Gas Co	78-37
Sun Oil Co	76-12
Do	78-19
Sundance Oil Co	77-1
Swann Oil, Inc	74-19
System Fuels, Inc	75-16
Tesoro Petroleum Corp	75-32
Do	78-10
Tesoro-Alaskan Petroleum Corp	74-21
Texaco, Inc	77-42
Texas City Refining, Inc	77-6
Thurman, F. D	75-70
Trans World Airlines	75-46
Transcontinental Gas Pipeline Corp	78-18
Tristate Oil Asphalt Sales, Inc	78-22
True Oil Purchasing Co	78-43
Twin Montana, Inc	75-10
U.S.A. Petroleum Corp	76-20
U.S. Oil and Refining Co	75-41
Union Oil Co. of Calif	77-53
United Oil Co., Inc	74-28
United Refining Co	76-1
United States Marine Corps	75-20
UPG, Inc	78-35
Vickers Petroleum Corp	77-47
Wallace, Gordon H	75-71
Wanda Petroleum Co	76-2
Ward, L. O	77-48
Webber Tanks, Inc	77-51
Weinert Estate, H. H	78-9
WESO Corp	75-60
Wickland Inc	75-35
Williams Energy Co	74-18
Wooten, Norman, Inc	75-9
Yellow Cab Co. of Philadelphia	78-57

APPENDIX B.—*Chronological Index of Rulings by Number and Title Issued Through September 30, 1978*

Ruling	Title
74-1	Prices for Base Period Purchasers.
74-2	Redirected Sales Pricing.
74-3	Supplier/Purchaser Relationships Under the Petroleum Allocation Regulations.
74-4	Impact of State Tax on Gross Sales.
74-5	Determination of Propane Prices Under the Petroleum Allocation Regulations.
74-6	Discrimination Among Purchasers of Allocated Products.
74-7	Truck Stop Leases.
74-8	Allocation on Non-Bonded Aviation Fuel.
74-9	Minimum Rent Provisions in Leases of Real Property in the Retailing of Gasoline.
74-10	Changes in Credit Terms.
74-11	Current Free Market Price for "New" and "Released" Crude Oil Under the Price Rule of § 212.72.
74-12	Unrecouped Increased Product Costs Where Prices Charged Under Fixed-Price Contracts are Less Than the Lawful Base Price.
74-13	Motor Gasoline Retail Sales Outlets.
74-14	Base Rent Regulations.
74-15	Portable Sanitation Industry.
74-16	Allowable Use of Multiple Allocation Fractions.
74-17	Base Price Computation.
74-18	Discounted May 15, 1973 Price to a Class of Purchaser.
74-19	Competitive Bids: Supplier/Purchaser Relationships.
74-20	Additional Use of Property Used in the Retailing of Gasoline.
74-21	Exchanges of Refined Petroleum Products for Crude Oil.

APPENDIX B.—*Chronological Index of Rulings by Number and Title Issued Through September 30, 1978*—Continued

Ruling	Title
74-22	Supplier/Purchaser Relationships Applying to the Department of the Interior.
74-23	Car Wash Sales of Gasoline.
74-24	Truck Stop Leases.
74-25	Spot Sales Under Part 211.
74-26	Application of the Refiner's Cost Formula of § 212.83(c) to Refiners Required to Sell Crude Oil Under the Allocation Program.
74-27	Allocation of Refiner's Increased Product Costs to Sales Volume.
74-28	Inapplicability of the "Stripper Well Lease" Exemption of 10 CFR § 210.32 to Gas Wells.
74-29	Production Wells for Purposes of the "Stripper Well Lease" Exemption of 10 CFR § 210.32.
74-30	Measurement of the Number of Barrels of Production from an Oil Well for the "Stripper Well Lease' Exemption of 10 CFR § 210.32.
75-1	Transportation Costs.
75-2	Application of the Term "Class of Purchaser" under FEA Petroleum Price Regulations.
75-3	Prospective Increases in Rent for Real Property Used in the Retailing of Gasoline.
75-4	Storage Tank Rentals.
75-5	Treatment of Confidential Information Received by FEA Pursuant to Oil and Gas Reserves Survey (Form FEA P-301-S-0).
75-6	Pricing of Natural Gas Liquid Products Prior to January 1, 1975.
75-7	Export Sales.
75-8	Qualification of Certain Consignees as Wholesale Purchaser-Resellers.
75-9	Storage Costs.
75-10	Transportation Costs Where Transportation is Provided by the Firm Concerned.
75-11	Rentals of New, Higher Cost Storage Tanks.
75-12	Calculation of "Average Daily Production" for Purposes of the Stripper Well Lease Exemption of 10 CFR 210.32 Where Production Has Been Curtailed.
75-13	Early Payment Percentage Discounts.
75-14	Prices Charged to Reflect Non-Product Cost Increases Incurred by Resellers, Reseller-Retailers and Retailers.
75-15	Definition of "Property" for Purposes of Computing Base Production Control Level Pursuant to 10 CFR 212.72.
75-16	Carry-Forward of the Amount by Which Prices Charged are Less Than the Price Increases Permitted To Reflect Increased Non-Product Costs by Resellers, Reseller-Retailers, and Retailers.
75-17	Application of FEA's Mandatory Petroleum Price and Allocation Regulations During September 1975.
75-18	Computation of Increased Cost of Natural Gas Shrinkage.
76-1	Allocations With Respect to Newly Constructed or Purchased Refineries Under Crude Oil Buy/Sell Program.
76-2	Production of "New" Crude Oil Due to Extra Day in February, 1976; Effect on Cumulative Deficiency Requirement and BPCL Adjustments.
76-3	Interpretation of Naval Petroleum Reserves Production Act of 1976.
76-4	Inapplicability of Mandatory Petroleum Allocation and Price Regulations to Synthetic Fuels Processed From Oil Shale, Tar Sands, and Coal.
76-5	Retail Sales Outlet Operator's Entitlement to Motor Gasoline.
76-6	Record Keeping Requirements.
77-1	Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil.

APPENDIX B.—*Chronological Index of Rulings by Number and Title Issued Through September 30, 1978*—Continued

Ruling	Title
77-2	Further Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil.
77-3	Cargo Sales.
77-4	Timing of Landed Cost for Interaffiliate Transactions.
77-5	Application of the Definition of "Transaction" for Purposes of Computing Weighted Average May 15, 1973, Prices.
77-6	Applicability of the Stripper Well Property Exemption to Properties That Produce Both Crude Oil and Condensate Recovered in Non-Associated Production.
77-7	Post-September 1, 1976 Treatment of Separate Reservoirs as Stripper Well Properties.
77-8	Termination of Crude Oil Supplier/Purchaser Relationships by a Producer.

APPENDIX C.—*Subject Index for Interpretations and Rulings Issued Through Sept. 30, 1978*

Subject	Interpretations	Rulings
Accounting Practices	1978-52	
Acquisition Rule	1975-9; 1978-18	
Affiliated Entities, def	1976-6	
Allocation Entitlement	1974-17; 1975-37	
Allocation Entitlement, Method of	1974-19	
Allocation Entitlement, Transfer of	1974-29; 1975-35; 1977-47.	1974-13.
Allocation Fraction		1974-16.
Allocation Levels	1974-1	
Assignment by FEA	1976-25	
Average Daily Production, def	1974-22; 1975: -41, -43	
Aviation Fuel, Allocation of		1974-8.
Base Period Supplier	1974: -6, -15; 1975: -31, -73.	
Base Period Supplier, Designation of	1974-21	
Base Period Supply Obligations	1974-25; 1976-11; 1977: -19, -20.	1974-25.
Base Period Use, Adjustments to	1977: -28, -32; 1978-24	1974-13.
Base Period Volume	1975-50	
Base Price	1975-5	1974: -2, -17, -18, -26; 1975-6; 1977-5.
BPCL	1975-27; 1976-16; 1977: -12, -37; 1978-6.	1975-15; 1976-2; 1977-2.
Base Rent Rule	1974: -24, -28	1974: -7, -9, -14, -20, -24; 1975-3.
Base Rent Rule, Lease Termination	1975-58	
Benzene and Toluene, Special Rules for	1976-10	
Blending Costs, Retailer	1975-74	
Bonded Fuel, def	1975: -8, -26, -46	
Bonded Fuel Exemption	1975: -8, -26, -46	
Borrow—Pay Back Rule	1975-30	
Burning of Petroleum Products by Power Generators	1975-25	
California lower tier crude oil	1978-48	
Certification	1977: -33, -52; 1978: -12, -24.	
Class of Purchaser	1974-7; 1975: -5, -6, -22, -31, -47, -63; 1976: -1, -6, -7, -20; 1977: -10, -11; 1978-44.	1974: -1, -2, -17, -18; 1975-2.
Commission Agents or Consignees	1974-10; 1975: -13, -17, -19, -31, -33, -48; 1977: -8, -27.	1975-8.
Competitive Bids	1975-56	1974-19.
Condensate, def	1978-35	
Confidential Information		1975-5.
Cost of Crude Oil, def	1976-4	
Covered Products, def	1976-24; 1977: -9, -50; 1978: -11, -28, -54.	
Crude Oil Buy/Sell Program	1977-34; 1978-39	1974-26; 1976-1.
Crude Oil, def	1975-29; 1977: -3, -22, -31.	
Crude Oil Resales	1978-25	
Crude Oil Runs to Stills, def	1978-31	
Crude Oil Ceiling Price Rules, Long-Term Contracts (Premiums).	1977: -2, -14; 1978-21	
Current Cumulative Deficiency	1974-8; 1976-16	1976-2.
Customary Discounts	1975-66	1974: -18, -23; 1975-13.
Customary Price Differential	1978-44	
D, Subpart; Part 212	1974-20; 1975-29; 1977-3; 1978-21.	
December 1 Rule	1974: -2, -3, -4; 1975-45; 1976: -15, -20; 1977: -7, -13, -14, -15, -42; 1978: -1, -45.	1974: -11, -21, -22; 1977-8.
E, Subpart; Part 212	1978: -16, -29	
EPAA Supercession of Other Federal Laws	1974-27; 1975-15	
End-user, def		1974-19.
Energy Conservation Program, Room Air Conditioners	1978-26	
Entitlements Program	1975-21; 1976-22; 1977: -5, -22, -31, -45; 1978: -31, -42, -48.	1976-3.

APPENDIX C.—*Subject Index for Interpretations and Rulings Issued Through Sept. 30, 1978*—Continued

Subject	Interpretations	Rulings
Equal Application Rule	1975-5; 1976-17; 1978: -36, -53.	
Exchange Agreements		1974-21.
Export Sales, def	1977-16	
Export Sales Deduction	1975-21; 1977: -16, -30, -36, -44; 1978: -10, -42, -54, -55.	
Export Sales Exemption	1977-16, -21, -44; 1978: -10, -42.	1975-7.
F, Subpart; Part 212	1976-6; 1977-3; 1978-4	1977-3.
Federal Preemption of State Laws	1978-4	
Field	1977-43	
Firm, def	1975: -3, -32, -52, -55, -69; 1976: -3, -8; 1977: -6, -18, -29.	
First Sale, def	1976-4; 1977-38; 1978-21.	
Five Percent Rule	1974-14; 1977: -6, -24	
G, Subpart; Part 212	1974: -24, -28; 1975-69	1974-24; 1975-3.
Guam	1975: -8, -26, -46	
Import Exemption	1975-24	
Inventories	1975-23	1977-3.
K, Subpart; Part 212	1976: -2, -5; 1977-3; 1978: -16, -29, -32.	1975: -6, -18.
Landed Costs		1977-4.
Motor Gasoline, def	1978-47	
Naphtha, def	1978-47	
Naphtha Allocation	1975-44	
Naval Petroleum Reserves, Crude Oil Price Exemption		1976-3.
Natural Gas Shrinkage	1978: -27, -34, -37, -41	
Natural Gas Liquids, def	1978: -32, -35	
Natural Gas Liquid Products	1974-13; 1977-3; 1978: -3, -27.	1975: -6, -18.
Natural Gasoline, def	1978-35	
Net-back Sale, def	1978-32	
New and Released Crude Oil	1975-2; 1977-42	1974-11.
New Item and New Market Rule	1974: -23, -24; 1975: -3, -9; 1976: -5, -7; 1978-3.	1974-20.
"New" Motor Gasoline Retail Sales Outlet	1975-61	1976-5.
"New" Wholesale Purchaser-Reseller	1975-57; 1977-28	
Non-product Cost Increases	1975: -48, -59, -74; 1978: -8, -13, -14, -52.	1975: -1, -4, -10, -11, -14, -16.
Normal Business Practices	1974: -3, -16, -27; 1975: -49, -62; 1977: -8, -11, -19, -26, -35; 1978: -7, -21, -38, -56, -57.	1974: -6, -10, -11, -23; 1975: -4, -11, -13.
Oil Import Regulations	1978-50	
Once-a-Month Rule	1975-64	
Over-recoupment	1975-12	
Passenger Transportation Services	1975-65	
Posted Price, def	1976-4; 1977: -26, -43; 1978: -17, -20, -30, -43.	1977-1.
Price, def		1974-10.
Price Increase	1977-53	
Price/Octane Number Information and Posting	1976-9	
Procedural Requirements	1975-40; 1976-12; 1977-28.	
Processing Agreements	1974-6	
Producer, def	1974-20	
Producer of Crude Oil, Price Rule	1978-17	
Product Cost Increases	1974-5; 1978: -40, -51	1974: -5, -26, -27; 1975: 1 -9, -10, -13, -18; 1977-3.
Product Cost Increases, Carryover of	1975-16	1974-12; 1975-16.
Propane Allocation	1975-14; 1976: -19, -21	
Propane Prices	1978-4	1974-5.
Property, def	1974-22; 1975: -2, -4, -27, -42; 1977: -1, -37, -42, -46; 1978: -5, -9, -15, -18, -58.	1975-15; 1977: -1, -2, -7.
Reclamation of Waste Crude Oil	1978-18	
Record-Keeping Requirements		1976-6.
Refined Petroleum Products, def	1975-1; 1978-42	
Refiner, def	1974-13; 1976-2; 1977: -6, -29; 1978: -22, -33.	
Refiner Gasoline Price Variation Rules	1978: -36, -53	
Refiner Price Formula:		
"A" Factor	1978-40	
"B" Factor	1978-51	
"V" Factor	1975-7	1974-27; 1975-7.
"H" Factor	1977-23	
"N" Factor	1978: -8, -13, -14, -52	
Refiner Price Rule	1977-53; 1978: -11, -13	1974-26.
Refinery Yield	1976-23	
Refunds	1975-12	
Rent, def	1975-51	
Rent Regulations (see also Base Rent Rule)	1975-69	1974: -7, -9, -14, -20, -24; 1975-3.

APPENDIX C.—*Subject Index for Interpretations and Rulings Issued Through Sept. 30, 1978*—Continued

Subject	Interpretations	Rulings
Reporting Requirements, Refiner	1975-11; 1977-24	
Reseller, def	1974-12; 1976-2; 1977: -3, -8, -29; 1978-22.	
Residual Fuel Oil, def	1975-29	
Retail Sales Outlets, Motor Gasoline		1974-13.
Retailer, def	1974-12; 1976-2; 1978-22.	
Retaliatory Actions	1975-63	
Retroactive Price Increase	1977-14; 1978-2	
Sales by Federal, State and Local Governments	1974-4; 1975-15	1974-22; 1976-3.
Sanitation Services, def	1974-1; 1975-39	1974-15.
Seller, def	1976-8	
September 1975; Application of Price/Allocation Regulations during.		1975-17.
Single Firm Treatment		1974-13.
State Tax Increase Pass-through	1975-18	1974-4.
Storage Tank Rentals		1975: -4, -11.
Stripper Well Lease Exemption	1974: -22, -26; 1975: -4, -10, -41, -43; 1977-48; 1978: -5, -9.	1974: -28, -29, -30; 1975-12; 1977: -1, -2, -6, -7.
Supplier, def	1976-23	
Supplier/Purchaser Relationship	1974: -17, -18, -19; 1975: -20, -54; 1976: -13, -14, -18; 1977: -20, -49; 1978: -23, -45, -46, -49, -56, -57, -59.	1974: -3, -19; 1975-8.
Supplier Substitution	1976-25	
Surplus Product, Purchase of	1974-19; 1975-20; 1977-41.	
Synthetic Fuels		1976-4.
S.N.G. Feedstock Allocation	1975-34	
Temporary Discounts on May 15, 1973	1975-6	
Transaction, def	1978-19	1977-5.
Transfer Pricing	1974-20	
Transportation Costs, def	1978-25	
Transportation Costs to Reseller/Retailer Inventory	1977: -4, -51	1975: -1, -9, -10.
Transportation Cost, Refiner	1977-25	
United States, def	1975: -8, -26, -46	
Unitization	1974-22; 1975: -2, -4, -10, -27; 1978: -6, -9.	1975-15; 1977-2.
Unleaded Gasoline	1976-3	
Waste Crude Oil, Reclamation of	1974: -11, -20; 1977-22	
Wholesale Purchaser-Consumer, def	1975: -37, -52	1974-19.
Wholesale Purchaser-Reseller, def	1974: -10, -12; 1975: -13, -17, -19, -33, -37, -38, -53, -60, -67, -68, -70, -71, -72; 1977: -17, -27, -39, -40; 1978: -46, -59.	1975-8.

APPENDIX D.—*Regulation Index for Interpretations and Rulings Issued Through Sept. 30, 1978**

Regulation interpreted	Interpretations	Rulings
Pt. 202, subpt. A		1975-5.
205.2	1976-12; 1977-28	
205.26(d)	1975-40	
205.33(a)	1976-12; 1977-28	
205.194	1975-12	
210.21	1975: -8, -26, -46; 1977-5.	
210.32	1974: -22, -26; 1975: -4, -10, -41, -43.	1974: -28, -29, -30; 1975-12; 1977-1.
210.33	1975: -8, -26, -46	
210.61	1975-63	1974-3.
210.62	1974: -3, -27; 1975-49; 1977: -8, -19, -26; 1978: -7, -21, -38.	1974: -6, -10, -11; 1975: -4, -11, -13.
210.62(a)	1974-16; 1975: -62, -63; 1977-35; 1978: -56, -57.	
210.62(c)	1976-18; 1977-11	1974-23.
210.77	1975-51	
210.914	1977-24	
210.92		1976-6.
211.1(a)	1977-8	
211.9	1974: -15, -19; 1975: -58, -62; 1976-25; 1977: -19, -49; 1978: -46, -49, -59.	1974: -3, -19.
211.9(a)	1974-18; 1975: -20, -54, -56, -73; 1977-8; 1978-23.	
211.9(c)	1977-20	
211.10	1975: -20, -56, -73	
211.10(a)	1975-35	

APPENDIX D.*—*Regulation Index for Interpretations and Rulings Issued Through Sept. 30, 1978**—Continued

Regulation interpreted	Interpretations	Rulings
211.10(b)	1974-17	1974: -16,-25.
211.10(e)	1974-29	
211.10(g)	1974-19; 1976: -14, -21; 1977-41.	
211.11	1974-17; 1975-61; 1976-19.	
211.11(b)	1974-6	
211.11(d)	1975-35	
211.12	1975: -50, -57; 1976-11	
211.12(e)	1974-17; 1976-19; 1977: -28, -49; 1978-38.	1974-19.
211.12(f)		1974-19.
211.12(h)	1976-18	
211.12(g)	1976-21	
211.13	1975-50	
211.13(c)	1976-12; 1977: -28, -32; 1978: -24, -38.	
211.13(f)	1977-28; 1978-24	
211.14(d)		1974: -3, -16.
211.22	1975-23	
211.24		1974-3.
211.24(a)	1974-25; 1976-11	
211.25	1975-31; 1976-25; 1978-23.	
211.25(a)	1977-20	
211.25(c)	1975-30	
211.29	1975-34; 1976-19	
Special rule No. 1 to subpt. A of pt. 211	1975-34; 1976-19	
211.31	1977-8	
211.51 (definitions)	See corresponding subject entry, app. C.	See corresponding subject entry, app. C.
211.62 (definitions)	do	Do.
211.63	1974: -2, -3, -4; 1975-45; 1976: -14, -20; 1977: -7, -13, -14, -15, -42; 1978: -1, -45.	1974: -21, -22; 1977-8.
211.64	1974: -2, -3	
211.64(a)		1974-11.
211.65	1974-6; 1977-34; 1978-39.	1976-1.
211.67	1977: -5, -22, -31; 1978-31.	1976-3.
211.67(a)(4)	1978-48	
211.67(d)(2)	1975-22; 1976-22; 1977: -16, -30, -36, -44; 1978: -10, -42, -54, -55.	
211.67(d)(5)	1977-45	
211.71(c)	1976-23	
Special rule No. 7 to subpt. C of pt. 211	1976-22	
211.82	1976-21; 1978-49	
211.83	1975-14	
211.83(c)	1976-19	
211.85	1978-49	
211.86	1978-49	
211.96(b)	1977-49	
211.102	1975: -20, -73	
211.103	1975-65	
211.103(a)	1974-1	
211.104	1974-6	
211.106	1975: -58, -61, -73; 1976-11; 1977: -19, -47.	1974-13; 1976-5.
211.106(b)	1974: -12, -25	
211.106(c)	1974-29; 1975-53	
211.106(d)	1974-25	
211.106(e)	1975-57	
211.145	1976-13	1974-8.
211.145(c)	1974-21	
211.145(d)	1974-21	
211.162	1975-54	
211.166	1974-19	
211.182	1978-47	
211.183	1975-44	
211.201	1975-37	
211.202	1975-37	
211.203(c)(2)(iii)	1975-37	
212.1		1975-3.
212.2	1975-24	
212.31 (definitions)	See corresponding subject entry, app. C.	See corresponding subject entry app. C.
212.52	1974-4; 1975-15	
212.53	1975-24; 1976-22	1975-7.
212.53(a)	1977: -16, -21, -36, -44; 1978: -10, -55.	
212.53(c)	1977-30	
212.54	1974: -22, -26; 1977: -2, -48; 1978: -5, -9, -58.	1977: -6, -7.

APPENDIX D.—*Regulation Index for Interpretations and Rulings Issued Through Sept. 30, 1978**—Continued

Regulation interpreted	Interpretations	Rulings
212.55	1977-2	1976-3.
212.71	1974-11	
212.72	1974: -8, -11; 1975: -2, -4, -27; 1976-16; 1977: -1, -3, -12, -33, -37, -38, -42, -46, -52; 1978: -5, -12, -15, -18, -58.	1977-7.
212.73	1974-11; 1975-42; 1977: -2, -3; 1978-20.	
212.74	1974: -8, -11; 1975: -2, -4, -42; 1977: -2, -3; 1978: -2, -17, -20, -30, -43.	1974-11.
212.74(c)	1977-14	
212.75	1978-6	1977-2.
212.76		1976-2.
212.81	1977-29	
212.82	1975: -5, -47; 1976: -3, -4, -5; 1977: -6, -18.	1974: -17, -18.
212.82(a)	1976-1	
212.82(b)	1975: -22, -31	
212.83	1974-20; 1975: -3, -5, -7; 1976-10; 1977: -23, -53; 1978-16.	1974: -12, -26, -27; 1975: -6, -7, -13.
212.83(b)	1976-4	
212.83(c)	1978-40	
212.83(c)(1)(iii)		1974-5.
212.83(c)(2)(iii)(D)	1978-51	
212.83(c)(2)(iii)(E)	1978: -8, -11, -13, -14, -52.	
212.83(e)	1975: -12, -16	
212.83(h)	1976-17; 1978: -36, -53	
212.84		1977-4.
212.85	1977-25	
212.88		1974-26.
212.91	1974-14; 1975: -3, -59; 1977: -3, -6, -24, -29.	
212.92	1975: -48, -74; 1976: -6, -8; 1977: -4, -51.	1975: -1, -9, -10.
212.93	1974: -5, -6, -12; 1975: -6, -9, -18, -59, -74; 1976-6; 1977-4.	1974: -4, -17, -18, -26.
212.93(a)	1976-7; 1977-3	
212.93(b)	1975: -48, -54, -64	1975: -1, -10, -14, -16.
212.93(e)		1975-16.
212.94	1978-39	1974-26.
212.101	1975-58	
212.102	1974-24; 1975: -51, -58	1974: -7, -9, -14, -20, -24; 1975-3.
212.103	1975-51	1974: -7, -9, -14, -20, -24; 1975-3.
212.111	1974: -23, -24; 1975: -3, -9; 1976: -5, -7; 1978-3.	1974-20.
212.111(c)(2)	1978-18	
212.112	1976-3	
212.126	1975-11	
212.129	1976-9	
212.131	1977: -33, -52	
212.131(a)(2)	1978-12	
212.161	1976-2	
212.161(b)(2)	1978-29	
212.162	1977-3; 1978: -3, -27, -32, -35, -37, -41.	
212.163	1978-32	
212.163(a)	1976-5; 1977-3	
212.164	1978-29	
212.164(a)	1976-5	
212.165	1978-16	
212.166		1975-18.
212.166(b)(3)	1978: -27, -37, -41	
212.167(b)	1978: -16, -34	
212.168	1978-34	
212.169	1978-32	
212.170	1978-16	
212.182	1978-25	
212.183	1978-25	
213.35	1978-50	
215.3	1975-25	
215.5	1975-25	
10 CFR pt. 430	1978-26	

*Regulations listed as cited in Interpretations and Rulings. No attempt has been made to change citations to reflect those relatively few cases in which regulations have been renumbered.

APPENDIX E.—*Rulings Construed by Interpretations Issued Through Sept. 30, 1978*

Rulings	Interpretations
1974-3	1975: -61, -62; 1976-25.
1974-4	1975-18.
1974-10	1974-16.
1974-11	1976-15.
1974-15	1975-39.
1974-17	1975-66.
1974-18	1975: -6, -66; 1976-20.
1974-19	1974-15; 1975: -52, -56.
1974-20	1974-24.
1974-22	1977-7.
1974-24	1974-28.
1974-29	1975: -41, -43.
1975-1	1975-74; 1977: -4, -51.
1975-2	1975: -22, -47, -63, -66; 1976: -1, -7 - 20.
1975-4	1977-11; 1978-7.
1975-8	1975: -33, -60, -67, -70, -71, -72; 1976-23; 1977: -17, -27, -39, -40.
1975-9	1975-74; 1977: -4, -51.
1975-10	1977: -4, -51.
1975-11	1977-11; 1978-7.
1975-12	1975: -41, -43; 1977-48.
1975-14	1976-8.
1975-15	1975-42; 1978: -6, -9, -15.
1977-1	1977: -1, -26, -37, -43; 1978-15.
1977-2	1978: -6, -15.
1977-5	1978-19.

APPENDIX F.—*Statutes Construed by Interpretations and Rulings Issued Through Sept. 30, 1978*

Statutes	Interpretations	Rulings
Economic Stabilization Act of 1970, as amended	1975-12; 1976-24	
Energy Policy and Conservation Act of 1975, as amended.	1977: -7, -12, -22, -26, -38, -42; 1978-26.	
Energy Supply and Environmental Coordination Act of 1974.		1975-5
Emergency Petroleum Allocation Act of 1973, as amended.	1974: -6, -13, -22, -26, -27; 1975: -1, -5, -8, -12, -15, -56, -66; 1976: -4, -6, -12, -20, -21, -22, -23, -24; 1977: -3, -5, -7, -11, -28, -42; 1978: -1, -4, -51, -54.	1974: -3, -28; 1975-17; 1976-4; 1977-1.
Federal Energy Administration Act of 1974	1974-13	
Freedom of Information Act		1975-5.
Naval Petroleum Reserves Protection Act of 1976		1976-3.
Trans-Alaska Pipeline Authorization Act		1975-12; 1977-1.

[FR Doc. 78-30205 Filed 10-24-78; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 368—U.S. IMPORTS

PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

Delegation of Authority to St. Louis District Office To Issue Import Certificates and Process Amendment Requests

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: In order to facilitate certain import and export control matters, selected U.S. Department of Commerce District Offices have been delegated authority to validate International Import Certificates and to process Amendments to Export Licenses. This authority is limited by certain conditions enumerated in Parts 368 and 372. This rule adds the St. Louis, Mo., District Office to the lists of district offices authorized to perform these functions.

EFFECTIVE DATE: October 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-4196.

SUPPLEMENTARY INFORMATION: Accordingly, the Export Administration Regulations (15 CFR Part 368 et seq.) are amended as follows:

1. Section 368.2(a)(2) is amended by inserting "St. Louis" in alphabetical order in the list of District Offices.

2. Section 372.11(g)(1) is amended by inserting "St. Louis" in alphabetical order in the list of District Offices.

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

Dated: October 19, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-30098 Filed 10-24-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

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

[TD 78-394]

CONFORMING AMENDMENTS REQUIRED BY THE "CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978"

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

ACTION: Final rule.

SUMMARY: This document conforms various sections of the Customs Regulations to the statutory changes made by Pub. L. 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978. Statutory changes include:

1. Increasing the value of forfeited merchandise sold at summary sale;

2. Publishing precedential decisions in the Customs Bulletin;

3. Increasing the dollar amount of the personal exemption accorded returning U.S. residents;

4. Providing a flat rate of duty for articles intended for personal or household use, or as bona fide gifts, not imported for resale or for the account of another person, if valued not over $600;

5. Providing that the flat rate of duty and personal exemption provisions are applicable to articles which are purchased in and shipped from American Samoa, Guam, or the U.S. Virgin Islands and which do not accompany the U.S. resident upon his return to the United States;

6. Reducing the delay in the effective date of the imposition of a higher rate of duty resulting from an administrative ruling;

7. Increasing the dollar limits for which the Secretary of the Treasury may forgo collecting small amounts of duties;

8. Treating an air waybill in the same manner as a bill of lading for Customs purposes;

9. Excluding yachts and other pleasure boats from the prohibition against Customs officers owning vessels; and

10. Prohibiting admission of baggage and effects without entry for all returning individuals except where otherwise provided by law, and limiting expedited customs examination to special circumstances.

EFFECTIVE DATE: Different effective dates apply to the various sections as noted below under that part of the document entitled "Inapplicabilty of Public Notice Requirement and Delayed Effective Date."

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Charles D. Ressin, Regulations and Legal Publications Division (202-566-8237); operational aspects: Harry W. Carnes, Inspection and Control Division (202-566-5607), 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pub. L. 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978 ("the Act"), amends various statutes administered by the Customs Service ("Customs"). As a result, it is necessary for Customs to amend its regulations contained in Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), to conform to the statutory changes. The amendments in this document represent technical changes and changes not requiring public comment necessary to conform the regulations to the Act. Other amendments which will require public comment will be the subject of separate documents to be published in the FEDERAL REGISTER as notices of proposed rulemaking.

SUMMARY SALE OF FORFEITED MERCHANDISE

1. Section 111 of the Act amends sections 607, 610, and 612, Tariff Act of 1930, as amended (19 U.S.C. 1607, 1610, 1612), to increase from $2,500 to $10,000 the value of merchandise seized and forfeited because of violations of the Customs laws which may be sold at summary sale without judicial proceedings. Sections 162.32(b), 162.43(c), 162.45, 162.46, 162.47(a), and 162.48, Customs Regulations, are being amended to reflect this change.

PUBLICATION OF PRECEDENTIAL DECISIONS

2. Section 112 of the Act amends the Tariff Act of 1950 by adding a new section 625, entitled "Publication of Decisions." New section 625 requires that any precedential decision issued by Customs with respect to any Customs transaction under the Tariff Act, including any ruling letter, internal advice memorandum, or protest review decision, shall be published in the Customs Bulletin or otherwise made avail

able for public inspection within 120 days after the decision is issued. Sections 177.10(a) and 177.11(b)(7), Customs Regulations, are being amended and a new § 174.32 is being added to incorporate these requirements.

Customs has begun an expanded program of publishing its more significant administrative decisions in the Customs Bulletin. Furthermore, a listing of decisions which are not of sufficient general interest to warrant publication as Treasury Decisions also is published in the Customs Bulletin. Other decisions are available under the Freedom of Information Act, as amended. In the future, Customs intends to make available to the public its precedential decisions by using advanced technology, such as microfiche. As new mechanisms are developed, a notice will be published in the FEDERAL REGISTER advising the public of the specific procedures to obtain a decision.

METRIC CONVERSION

3. Section 202 of the Act in part amends Schedule 8, Tariff Schedules of the United States ("TSUS") (19 U.S.C. 1202), to convert to the metric system of measurement with respect to quantities of merchandise to which an exemption from duty is accorded to individuals entering the United States. Conversion becomes effective on January 1, 1980, when the regulations of the Bureau of Alcohol, Tobacco, and Firearms will require all containers of alcoholic beverages to be in metric sizes. This document is limited to aspects of section 202 which are nonmetric in nature or which are not to be considered as metric changes. Amendments to the Customs Regulations to reflect the metric conversion will be published at a future time.

PERSONAL EXEMPTIONS

4. Section 202 also amends schedule 8, TSUS, to equalize the personal liquor and cigarette duty-free exemption for returning U.S. residents and nonresidents. Item 812.20, TSUS, is amended to reduce from 300 to 200 the number of cigarettes which may be brought in by an adult nonresident for his own consumption. Section 148.43(a), Customs Regulations, is being amended to reflect this change. Item 812.25, TSUS, is amended to eliminate alcoholic beverage and cigarettes from the category of articles that a nonresident may import duty-free as bona fide gifts. Sections 148.43(b) and 148.44(a), Custom Regulations, are being amended to reflect these changes. Item 812.40, TSUS, is amended to include not more than 4 liters of alcoholic beverages which may accompany an arriving adult person (resident or nonresident) who is in transit to a place outside outside of the United States. Sections 148.41 and 148.66(b), Customs Regulations, are being amended to reflect this change. Item 813.30, TSUS, is amended to limit to 200 (one carton) the number of cigarettes that may accompany a returning U.S. resident. Section 148.33(d)(1), Custom Regulations, is being amended to reflect this change.

Item 813.10, TSUS in amended to provide that U.S. citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States ("Virgin Islands") shall be treated as residents for purposes of applying items 812.25 and 813.30, TSUS. Sections 148.2(b) and 148.31(a), Customs Regulations, are being amended to reflect this change.

In addition, item 813.31, TSUS, is amended to increase the dollar amount of the personal exemption accorded returning U.S. residents. The prior exemption was $100, or $200 in the case of persons arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands. These amounts are increased to $300 and $600, respectively. Sections 148.12(b)(1)(i) and 148.17 (b) and (c), subpart D of part 148, and § 148.51(a)(2), Customs Regulations, are being amended to reflect these changes.

FLAT RATE OF DUTY

5. The tariff classification and rate of duty of an imported article generally were not affected by the commercial or noncommercial nature of the importation before enactment of Pub. L. 95-410. Exceptions to this rule included the personal exemptions provided for returning residents and nonresidents and the provisions granting free entry of unsolicited gifts not exceeding $10 in value. A returning resident was entitled to an exemption from duty for articles accompanying him of up to $100 aggregate value ($200 if coming from the insular possessions of the United States). Dutiable articles over the $100 limitation were subject to duty at the rate prescribed in the applicable provisions of TSUS.

Section 203 of the Act amends schedule 8, TSUS, by redesignating present part 6 as part 7 and by introducing a new Part 6, comprised of items 869.00 and 869.10, TSUS, entitled "Noncommercial Importations of Limited Value." New part 6 applies to articles intended for personal or household use, or as bona fide gifts, not imported for resale or for the account of another person, if valued not over $600 fair retail value in the country of acquisition and accompanying "a person," including a crewmember, arriving in the United States. In these circumstances, a flat rate of duty of 10 percent (or 5 percent, for articles acquired in American Samoa, Guam, or the Virgin Islands) of the fair retail value of the articles would be assessed in place of any other rates of duty except free rates of duty. The flat rate of duty does not apply to commercial entries.

To implement section 203 of the Act, part 148, Customs Regulations, concerning personal declarations and exemptions, is being further amended by adding a new subpart J relating to noncommercial importations of limited value.

New § 148.101 provides that if the dutiable amount of the article(s) is over $600 fair retail value, the flat rate of duty provisions would apply to the amount not over $600 fair retail value and the excess amount would be valued under section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). The article(s) would be classified under the appropriate TSUS item number.

New § 148.103 provides that when members of a family residing in one household travel together on their return to the United States, the flat rate of duty allowance under item 869.00 or 869.10, TSUS, will be grouped and allowed without regard to which member of the family may be the owner of the articles. For example, an eligible family of four would have their articles grouped for a total of $2,400 fair retail value for entry at the flat rate of duty. This section parallels the provision relating to personal exemptions presently found in § 148.34, Custom Regulations.

Section 203 of the Act also provides that if application of the flat rate of duty to particular articles adversely affects the economic interest of the United States, the Secretary of the Treasury or his delegate may exclude those articles from the application of this provision. Part 148, Customs Regulations, is being amended by adding a new § 148.105 to establish a procedure for excluding articles from the flat rate of duty provisions if the importation of the articles adversely affects the economic interests of the United States.

ARTICLES TO FOLLOW

6. Under section 203 of the Act, the flat rate of duty provisions are applicable to articles which are purchased in *and* shipped from American Samoa, Guam, or the Virgin Islands by "a person," including a crewmember, and which do not accompany the person upon his arrival in the United States.

Previously, under item 813.31, TSUS, the personal exemption provisions applicable to a U.S. resident arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands permitted the exemption from duty only with respect to articles accompanying the returning U.S. resident.

Under section 202 of the Act, U.S. residents arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands may apply the personal exemption to articles purchased there even if the articles do not accompany the resident upon his return to the United States. The personal exemption thus is applicable to articles purchased in the islands by U.S. residents for delivery to them after their return to the United States.

To implement sections 202 and 203 of the Act, concerning unaccompanied articles purchased in and shipped from American Samoa, Guam, or the Virgin Islands, part 148 is further amended by adding a new subpart K. Conforming amendments to part 145 are also being made.

New § 148.116 provides that a claim for administrative review may be filed if the person is dissatisfied with the amount of duties assessed an unaccompanied article. This section provides a remedy to the person who is entitled to the flat rate of duty allowance but is assessed duty under another item or items of the tariff schedules when the article or articles arrive(s) in the United States. This situation may arise, for example, if the proper documentation did not accompany the shipment.

Crewmembers, while not entitled to the benefit of the articles to follow provision of item 813.31, are entitled to use the articles to follow provision of item 869.10.

EFFECTIVE DATE FOR INCREASE OF DUTY

7. Section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), formerly provided that no administrative ruling resulting in a higher rate of duty than found to have been applicable to imported merchandise under an established and uniform practice shall be effective prior to the expiration of 30 days after the date of publication of the ruling in the weekly "Treasury Decisions" (now the "Customs Bulletin").

Section 204 of the act amends 19 U.S.C. 1315(d) to provide that no administrative ruling described above shall be effective prior to the expiration of 30 days after the date of publication of the ruling in the FEDERAL REGISTER rather than the Customs Bulletin. Section 177.10(e), Customs Regulations, is being amended to reflect this change.

DUTY COLLECTION WHERE EXPENSES ARE DISPROPORTIONATE

8. Section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321), formerly permitted the Secretary of the Treasury to forgo collecting specified small amounts of duties and taxes where the expense and inconvenience to the Government of collection were disproportionate to the amount of revenue that was collected.

Under 19 U.S.C. 1321(a)(1), the Secretary was authorized to disregard a difference of less than $3 between estimated duties or taxes deposited and duties or taxes ultimately determined to be due. Under 19 U.S.C. 1321(a)(2)(A), the Secretary was authorized to admit bona fide gifts to persons in the United States free of duty and tax if the aggregate value of the exempt articles imported by one person on 1 day did not exceed $10 ($20 if from American Samoa, Guam, or the Virgin Islands). Likewise, under 19 U.S.C. 1321(a)(2)(B), the Secretary was authorized to admit free of duty and tax articles up to a value of $10 per person per day which accompanied, and which were for the personal household use of, persons arriving in the United States who were not entitled to other listed exemptions. Under 19 U.S.C. 1321(a)(2)(C), the Secretary was authorized to admit free of duty and tax in any other case $1 worth of goods per person per day.

Section 205 of the Act increases the dollar limits in 19 U.S.C. 1321 from $3 to $10 (sec. 1321(a)(1)); $10 to $25 and $20 to $40 (sec. 1321(a)(2)(A)); $10 to $25 (sec. 1321(a)(2)(B)); and $1 to $5 (sec. 1321(a)(2)(C)). Also, the authority to forego an underpayment of "duties or taxes" is changed to "duties and taxes". Whereas previously $3 of duty and $3 of tax could be disregarded, the Act limits the total amount of duty and tax underpayment which may be disregarded to $10 (not $10 of duty and $10 of tax). Sections 10.151, 10.152, 10.153(b), 10.153 (d)(2) and (d)(3), 10.153 (e) and (f), 145.31, 145.32, 148.12(b)(2)(ii), 148.51(b)(1), and 159.6, Customs Regulations, are being amended to reflect these changes.

AIR WAYBILLS

9. Section 483(1), Tariff Act of 1930, as amended (19 U.S.C. 1483(1)), makes all imported merchandise the property of the consignee for purposes of Customs law administration. The holder of a bill of lading endorsed by the consignee named in the bill (or, if the merchandise is consigned to order, endorsed by the consignor) is considered to be the consignee of the merchandise.

However, the holder of an endorsed air waybill for merchandise imported by air previously was not considered to be the consignee and owner of the merchandise under 19 U.S.C. 1483 because article 12 of the Warsaw Convention (49 Stat. 3017) permits the consignor to direct the air carrier not to deliver merchandise to the person named in the air waybill. Thus, the carrier has been required to certify that the holder of an air waybill is the consignee of the merchandise.

Section 207 of the Act amends 19 U.S.C. 1483 to create the same presumption for a holder of a properly endorsed air waybill as exists for a holder of a properly endorsed bill of lading (that he is the consignee of the merchandise). At the same time, 19 U.S.C. 1483 is further amended to insure that the rights of the consignor under article 12 of the Warsaw Convention remain the same. For Customs purposes, an air waybill now will be treated in the same manner as a bill of lading so that a separate air carrier's certificate would no longer be necessary to enter merchandise. Sections 141.11(a), 141.13, 141.14, 141.15, 141.16(a), 141.53(d), 141.54 (b) and (c), 141.111(b)(4), and 141.111(c), Customs Regulations, are being amended to reflect these changes.

OWNERSHIP OF YACHTS BY CUSTOMS OFFICERS AND EMPLOYEES

10. Section 599, Tariff Act of 1930 (19 U.S.C. 1599), prohibits Customs officers from owning any vessels. This provision has been interpreted to prohibit ownership of yachts and other pleasure boats by Customs officers and employees.

Section 212 of the Act amends 19 U.S.C. 1599 by excluding yachts and other pleasure boats from the prohibition against Customs officers owning vessels.

Accordingly, part 4, Customs Regulations, is being amended by adding a new § 4.101 to reflect this prohibition and exception.

ENTRY OF INDIVIDUALS

11. Treasury Decision 76-325 prohibited the prior practice of Customs permitting certain U.S. officials and employees duty-free entry of articles they brought with them from abroad by not requiring them to enter their baggage and effects. However, expedited Customs examination and clearance for these officials still was permitted in certain circumstances. (See 41 FR 50997, Nov. 19, 1976).

Section 215 of the Act prohibits admission of the baggage and effects without entry for all individuals returning to the United States from abroad in all situations except where otherwise provided by law. Also, no individual shall be entitled to expedited Customs examination and clearance of his or her baggage and effects unless under special circumstances, including when that individual is seriously ill or infirm, summoned home by news of affliction or disaster, or accompanying the body of a deceased relative. Section 148.84, Customs Regulations, is being amended to reflect this change.

INAPPLICABILITY OF PUBLIC NOTICE REQUIREMENT AND DELAYED EFFECTIVE DATE

Because each of these amendments merely implements a statutory requirement, notice, and public procedure thereon are unnecessary, and good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553.

Except as hereafter provided, each amendment is effective on October 3, 1978, the date of enactment of Pub. L. 95-410. However, Pub. L. 95-410 provides that the personal exemption provisions in section 202 and the flat rate of duty provisions in section 203 shall be effective on the 30th day following enactment. Accordingly, the amendments to §§ 145.12 and 145.43 and each amendment to part 148, except amendments to §§ 148.12(b)(2)(ii), 148.51(b)(1), and 148.84, which are effective on the date of enactment, are effective on November 2, 1978, the 30th day following enactment.

COMMENTS

Since the amendments in this document merely implement statutory requirements which are effective on the date of enactment of Pub. L. 95-410, or on the 30th day following enactment, these amendments are being published as a final rule. Recognizing the need to assess the effects of these amendments, the Customs Service will evaluate their impact as soon as sufficient experience has been acquired, with a view to making appropriate revisions.

Customs will entertain written comments from the public. Any comments received will be reviewed to determine whether it would be appropriate to change the amendments in the future. Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, Room 2335, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted will be available for public inspection in accordance with § 103.8(b) of the Customs Regulations (19 CFR 103.8(b)), during regular business hours, at the Regulations and Legal Publications Division.

DRAFTING INFORMATION

The principal authors of this document were Charles D. Ressin and John E. Elkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Parts 4, 10, 141, 145, 148, 159, 162, 174, and 177, Customs Regulations (19 CFR 4, 10, 141, 145, 148, 159, 162, 174, 177), are amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Part 4 is amended by adding a new § 4.101 to read as follows:

§ 4.101 Prohibitions against Customs officers and employees.

No Customs officer or employee shall:

(a) Own, in whole or in part, any vessel except a yacht or other pleasure boat;

(b) Act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the vessel; or

(c) Import or be concerned directly or indirectly in the importation of any merchandise for sale into the United States

(Sec. 599, 46 Stat. 753 (19 U.S.C. 1599).)

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§ 10.151 [Amended]

1. Section 10.151 is amended by substituting "$5" for "$1" in the section heading and text.

§ 10.152 [Amended]

2. The first sentence of § 10.152 is amended by substituting "$25" for "$10" and "$40" for "$20".

§ 10.153 [Amended]

3. The third sentence of § 10.153(b) is amended by substituting "$25" for "$10" and "$40" for "$20".

4. Sections 10.153(d)(2) and 10.153(d)(3) are amended by substituting "$25" for "$10" and "$40" for "$20".

5. Section 10.153(e) is amended by substituting "$5" for "$1".

6. Section 10.153(f) is amended by substituting "$25" for "$10" and "$40" for "$20".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 141—ENTRY OF MERCHANDISE

1. Section 141.11(a)(1) is amended to read as follows:

§ 141.11 Evidence of right to make entry for importations by common carrier.

(a) *Merchandise not released directly to carrier.* * * *

(1) A bill of lading or air waybill, presented by the holder thereof, properly endorsed when endorsement is required under the law. A nonnegotiable bill of lading, or air waybill, may not be endorsed by the named consignee to give someone else the right to make entry. If the person making entry intends to use the original bill of lading or air waybill to obtain a duplicate bill of lading, duplicate air waybill, or carrier's certificate from the carrier, the exchange shall be made before the entry is filed, and the duplicate bill of lading, duplicate air waybill, or carrier's certificate shall be used to make entry in accordance with subparagraph (3) or (4) of this paragraph. For purposes of this part, the rights of the consignor relating to an air waybill as prescribed by the Warsaw Convention (49 Stat. 3017) shall be protected.

* * * * *

2. Section 141.11(a)(2) is amended by inserting "or air waybill" after "bill of lading" and "or air waybills" after "bills of lading".

3. Section 141.11(a)(3) is amended by inserting "or air waybill" after "bill of lading" where it appears in the text, the title of the form, and the text of the form.

4. Section 141.11(a)(6) is amended by inserting "or air waybill" after "bill of lading".

5. Section 141.13 is amended to read as follows:

§ 141.13 Right to make entry of abandoned or salvaged merchandise.

Underwriters of abandoned merchandise or salvors of merchandise saved from a wreck who are unable to produce a bill of lading, air waybill, certified duplicate bill of lading or air waybill, or carrier's certificate, shall produce evidence satisfactory to the district director of their right to act.

6. Section 141.14 is amended to read as follows:

§ 141.14 Deceased or insolvent consignees and court-appointed administrators.

The executor or administrator of the estate of a deceased consignee, the receiver or other legal representative of an insolvent consignee, or the representative appointed in any action or proceeding at law to act for a consignee shall not be permitted to make entry unless he produces a duly endorsed bill of lading or air waybill, a carrier's certificate, or a duplicate bill of lading or air waybill, executed in accordance with subsections (h) or (i) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), showing him to be the consignee for Customs purposes.

7. Section 141.15(a) is amended to read as follows:

§ 141.15 Bond for production of bill of lading or air waybill.

(a) *When appropriate.* If the person desiring to make entry is unable to present a bill of lading, air waybill, or other evidence of right to make entry in accordance with § 141.11, the district director may accept a bond for the production of a bill of lading or air waybill under the provisions of section 484(c), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)). The bond shall be for the production of a bill of lading or air waybill, unless the person making entry intends to produce a carrier's certificate or certified duplicate bill of lading or air waybill. In that case, no bond is required because section 484(c) does not apply to entries made on a carrier's certificate or certified duplicate bill of lading or air waybill. If the district director is in doubt as to the propriety of accepting entry on a bond for the production of a bill of lading or air waybill, he shall request authority to do so from the Commissioner of Customs.

* * * * *

8. Section 141.15(c) is amended by inserting "or air waybill" after the term "bill of lading" wherever it appears.

§ 141.16 [Amended]

9. Section 141.16(a) is amended by inserting "or air waybill" after the term "bill of lading" wherever it appears in the heading and text.

§ 141.53 [Amended]

10. Section 141.53(d) is amended by inserting "or air waybill" after the term "bill of lading" wherever it appears in the text.

11. Section 141.54(b) is amended by inserting "or air waybill" after the term "bill of lading" wherever it appears in the heading, text, and endorsement.

12. Section 141.54(c) and footnote 1 to the form entitled "Authority To Make Entry" included therein are amended to read as follows:

§ 141.54 Separate entries for consolidated shipments.

* * * * *

(c) *Certificate by nominal consignee.* Except when an authority to make entry for a portion of a consolidated shipment is executed on the entry form in the space provided, at the time of depositing the bill of lading, air waybill, or other document, the named consignee shall produce a certificate prepared and signed by him for each portion of the shipment for which separate entry is desired. The authority to make entry carried by such a certificate may be transferred by endorsement. The certificate shall be in the following form:

* * * * *

[1] Insert "bill of lading," "air waybill," "certified duplicate bill of lading," "certified duplicate air waybill," "carrier's certificate," or "shipping receipt."

§ 141.111 [Amended]

13. Section 141.111(b)(4) is amended by inserting "or air waybill" after the term "bill of lading" wherever it appears in the text and form.

14. Section 141.111(c) is amended by inserting "or air waybill" after "bill of lading."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 145—MAIL IMPORTATIONS

1. The first sentence of § 145.12(b) is amended by substituting "paragraphs (c) and (e)" for "paragraph (c)".

2. Section 145.12 is further amended by adding a new paragraph (e) to read as follows:

§ 145.12 Entry of merchandise.

* * * * *

(e) *Unaccompanied shipments*—(1) *Mail entry to be attached.* If the requirements of § 148.115(a) of this chapter are met, Customs officers shall prepare and attach a mail entry, Customs Form 3419, for each shipment for which entry is claimed under item 869.10, Tariff Schedules of the United States (19 U.S.C. 1202), which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up the shipment at the Customs office where it is being processed, the Customs officer shall prepare an informal entry, Customs Form 5119-A, and collect the duty in accordance with Subpart C of Part 143 of this chapter if the requirements of § 148.115(a) of this chapter are met.

(2) *Disposition of Customs Form 255.* The Declaration of Unaccompanied Articles, Customs Form 255, affixed to the shipment shall be removed by the Customs officer and retained for Customs purposes. If a mail entry, Customs Form 3419, has been prepared, the mail entry number shall be noted on the Customs Form 255.

§ 145.31 [Amended]

3. Section 145.31 is amended by substituting "$5" for "$1" in the section heading and text.

§ 145.32 [Amended]

4. Section 145.32 is amended by substituting "$25" for "$10" and "$40" for "$20".

5. Part 145 is further amended by adding a new § 145.43 to read as follows:

§ 145.43 Unaccompanied tourist shipments.

Unaccompanied tourist shipments for which entry is claimed under item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), may be passed free of duty and tax if the requirements of § 148.115(a) of this chapter are met. The Declaration of Unaccompanied Articles, Customs Form 255, shall be removed by the Customs officer from the shipment and retained for Customs purposes.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C 66, 1624).)

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

§ 148.2 [Amended]

1. The first sentence of § 148.2(b) is amended by inserting "(including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States)" after "or persons who have formerly resided in the United States" and by substituting "of the United States" for "thereof".

§ 148.12 [Amended]

2. Section 148.12(b)(1)(i) is amended by substituting "$300" for "$100" and "$600" for "$200".

3. Section 148.12(b)(2)(ii) is amended by substituting "$25" for "$10".

§ 148.31 [Amended]

4. The first sentence of § 148.31(a) is amended by inserting "(including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States)" after "Each returning resident".

§ 148.17 [Amended]

5. Sections 148.17 (b) and (c) are amended by substituting "$300" for "$100" and "$600" for "$200".

Subpart D—[Amended]

6. Subpart D of Part 148 is amended by substituting "$300" for "$100" and "$600" for "$200" wherever those amounts appear.

§ 148.33 [Amended]

7. Section 148.33(d)(1) is amended by inserting "200 cigarettes and" before "100 cigars".

§ 148.41 [Amended]

8. Section 148.41 is amended by inserting "(including not more than 4 liters of alcoholic beverages)" after "articles not exceeding $200 in aggregate value".

§ 148.43 [Amended]

9. Section 148.43(a) is amended by substituting "200 cigarettes" for "300 cigarettes" in the first sentence and by replacing the semicolon in the second sentence with a period and deleting the remainder of the second sentence.

10. Section 148.43(b) is amended by deleting "not more than 1 wine gallon of alcoholic beverages and" and substituting "cigars" for "articles".

§ 148.44 [Amended]

11. The first sentence of § 148.44(a) is amended by inserting "(not including alcoholic beverages and cigarettes, but including not more than 100 cigars)" after "articles not over $100 in aggregate value". The second sentence of this section is amended to read as follows:

"See section 148.43(b) for limitations on cigars under this exemption."

§ 148.51 [Amended]

12. Section 148.51(a)(2) is amended by substituting "$300" for "$100" and "$600" for "$200".

13. Section 148.51(b)(1) is amended by substituting "$25" for "$10".

§ 148.66 [Amended]

14. Section 148.66(b) is amended by inserting "(including not more than 4 liters of alcoholic beverages)" after "articles not exceeding $200 in aggregate value".

15. Section 148.84 is amended to read as follows:

§ 148.84 Special treatment for returning individuals.

(a) Except as otherwise provided by law, an individual returning to the United States from abroad:

(1) Shall not have his or her baggage and effects admitted free of duty without entry.

(2) Shall not be entitled to expedited Customs examination and clearance of his or her baggage and effects unless the district director finds:

(i) That the individual:

(A) Is seriously ill or infirm;

(B) Was summoned by news of affliction or disaster; or

(C) Is accompanying the body of a deceased relative; or

(ii) That a special circumstance exists which warrants expedited examination and clearance.

(b) For purposes of this section, the term "baggage and effects" means any article which was in the possession of the individual while abroad, is being imported in connection with his or her arrival, and is intended for his or her bona fide personal or household use. This term does not include any article imported as an accommodation to others or for sale or other commercial use.

16. Part 148 is further amended by adding new Subparts J and K to read as follows:

Subpart J—Noncommercial Importations of Limited Value

Sec.

148.101 Applicability.
148.102 Flat rate of duty.
148.103 Family grouping of allowances.
148.104 Frequency of use.
148.105 Procedure for excluding articles from flat rate of duty.
148.106 Excluded articles of merchandise.

Subpart K—Unaccompanied Shipments from American Samoa, Guam, or the Virgin Islands of the United States

Sec.

148.110 Applicability.
148.111 Written declaration for unaccompanied articles.
148.112 Evidence of purchase.
148.113 Declaration, entry, and collection of duty.
148.114 Shipment of unaccompanied articles.
148.115 Release of shipment.
148.116 Claim for refund.

AUTHORITY. R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).

Subpart J—Noncommercial Importations of Limited Value

§ 148.101 Applicability.

Each person, including a crewmember, arriving in the United States who enters articles for his personal or household use, or as bona fide gifts not imported for sale nor for the account of another person, valued in the aggregate at not over $600 fair retail value in the country of acquisition, shall be assessed a flat rate of duty on the articles, as provided in § 148.102. The entry shall be made under item 869.00 or 869.10, Tariff Schedules of the United States (19 U.S.C. 1202), and is subject to the limitations and conditions in this subpart. Except as provided in § 148.105, the flat rate of duty shall be assessed in place of any rates of duty other than free rates of duty. If the dutiable amount of the article(s) is over $600 fair retail value, the flat rate of duty provisions shall apply to the amount not over $600 fair retail value, and the excess amount shall be valued under section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). The article(s) shall be classified under the appropriate item number of the tariff schedules. For purposes of this subpart, "fair retail value" in the country of acquisition means the price at which the merchandise is freely offered there for sale at retail and "country of acquisition" includes America Samoa, Guam, and the Virgin Islands of the United States.

Two examples of the application of this subpart are set forth below:

Example 1: B returned from Europe where he acquired merchandise having a fair retail value of $1,050. Assume for purposes of this example that (1) in addition to the personal exemption of $300, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, and (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate.

B presents his baggage to the Customs officer for examination and his declaration for verification. Duty is figures as follows:

	Fair retail value	Duty
(a) The $300 personal exemption	$300	—
(b) Articles which carry a free rate of duty	100	—
(c) The $600 flat rate of duty allowance calculated at 10 percent	600	$60
(d) Balance of articles subject to duty at rates other than flat rate	[1]50	(1)
Total	1,050	(1)

[1]The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

Example 2: Mr. and Mrs. B return from the U.S. Virgin Islands. During the trip, they acquired merchandise having a fair retail value of $2,900. Assume for purposes of this example that (1) in addition to the personal exemption of $600 for each returning resident, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate, and (4) Mrs. B made $400 in purchases on the trip, none of which carries a free rate of duty.

Mr. and Mrs. B present their baggage to the Customs officer for examination and their declaration for verification. Duty is figured as follows:

	Fair retail value	Duty
(a) The $600 personal exemptions for residents returning from the Virgin Islands are grouped for a total of	$1,200	—
(b) Articles which carry a free rate of duty	100	—
(c) The $600 flat rate of duty allowances calculated at 5 percent for persons arriving from the Virgin Islands are grouped for a total of	1,200	$60
(d) Balance of articles subject to duty at rates other than the flat rates of duty	[1]400	(1)
Total	2,900	(1)

[1]The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

148.102 Flat rate of duty.

(a) *Generally.* The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam, or the Virgin Islands of the United States) shall be 10 percent of the fair retail value in the country of acquisition.

(b) *Insular possessions.* The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States (exclusive of duty-free articles), acquired in these insluar possessions as an incident of the person's physical presence there, shall be 5 percent of the fair retail value in the insular possession in which acquired.

§ 148.103 Family grouping of allowances.

(a) *Generally.* When members of a family residing in one household travel together on their return to the United States, the flat rate of duty allowance will be grouped and allowed without regard to which member of the family is the owner of the articles. A group allowance shall not include an allowance for a family member not entitled to it in his own right, nor shall a group allowance be applied to any property of that member.

(b) *Members of a family residing in one household.* "Members of a family residing in one household" shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

§ 148.104 Frequency of use.

(a) *30-day period.* The flat rate of duty shall not apply to a person who has used the provision within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he declared articles for which the flat rate of duty was applicable shall be considered the date that rate was last used.

(b) *Computation of time.* The 30-day period immediately prior to the person's arrival in the United States shall be computed by excluding the day of arrival and counting backward 30 days.

(c) *Remainder not applicable to subsequent journey.* A person who has received a flat rate of duty allowance of less than $600 in connection with his return from one journey is not entitled to apply the remainder to articles acquired abroad on a subsequent journey.

§ 148.105 Procedure for excluding articles from flat rate of duty.

(a) *Generally.* Any person who has information that merchandise is being imported into the United States under the provisions of item 869.00 or 869.10, Tariff Schedules of the United States (19 U.S.C. 1202), and this subpart which adversely affects the economic interest of the United States may communicate the information in writing to the Commissioner of Customs, Attention: Office of Operations, Washington, D.C. 20229.

(b) *Content of communication.* The communication to the Commissioner need not be in any particular form but shall contain the following:

(1) The name of the individual and the person, firm, or association the individual represents, if any;

(2) The nature of the individual's interest in the matter, if any;

(3) A description of the merchandise, which it is alleged affects the economic interest of the United States adversely, including item numbers of the tariff schedules, if known;

(4) The country of acquisition and the ports and dates of entry of the merchandise, if known; and

(5) A statement and supporting evidence as to the manner in which the individual believes the economic interest of the United States is being adversely affected.

(c) *Inquiry to be conducted.* Upon receipt of a communication containing the information required by paragraph (b) of this section, an inquiry will be conducted.

(d) *Negative determination.* If the inquiry results in a finding that no reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is adversely affecting the economic interest of the United States, the inquirer shall be advised in writing of the finding and the matter shall be closed.

(e) *Publication of tentative finding.* If the inquiry results in a finding by the Secretary of the Treasury that reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is affecting the economic interest of the United States adversely, a notice of the finding will be published in the FEDERAL REGISTER and Customs Bulletin, along with a statement of intent to exclude the articles from application of the flat rate of duty provisions. Interested persons will be given an opportunity to submit written comments on the notice.

(f) *Final determination.* Based upon the comments received and the results of any additional inquiry as may be necessary, if it is determined by the Secretary of the Treasury that application of the flat rate of duty provisions adversely affects the economic interest of the United States, a Treasury Decision will be published in the FEDERAL REGISTER and Customs Bulletin announcing that the merchandise will be excluded from application of the flat rate of duty provisions. Excluded articles of merchandise shall be listed in § 148.106. If it is determined by the Secretary of the Treasury that a valid basis for excluding the merchandise from the flat rate of duty provisions does not exist, the notice proposing to exclude the article will be withdrawn by publishing a notice in the FEDERAL REGISTER and the Customs Bulletin.

§ 148.106 Excluded articles of merchandise.

The following articles of merchandise have been found to affect the economic interest of the United States adversely, and they are excluded from the application of the flat rate of duty provisions.

[Reserved for listing.]

Subpart K—Unaccompanied Shipments From American Samoa, Guam or the Virgin Islands of the United States

§ 148.110 Applicability.

The provisions of this subpart are applicable to articles not accompanying a person, including a crewmember, which are purchased in and shipped from American Samoa, Guam, or the Virgin Islands of the United States. However, this subpart is not applicable to the importation of unaccompanied articles in a manner prohibited by law or regulation (e.g., mail shipments of alcoholic beverages or alcoholic beverages shipped other than by mail in excess of quantities authorized by State laws or regulations).

The following is a summary of the procedure to be followed to obtain the benefits of this subpart: A person purchasing articles in American Samoa, Guam or the Virgin Islands of the United States would receive a sales slip, invoice, or other evidence of purchase which he would present to the Customs officer along with his baggage declaration, Customs Form 6059-B, and a Declaration of Unaccompanied Articles, Customs Form 255. The latter form is prepared in triplicate for each shipment to follow. The Customs officer would verify the information, indicate on the form whether the article or articles were free of duty, dutiable at the flat rate, or a combination of the foregoing, and validate the form. Two copies would be returned to

the traveler, who would send one form to the vendor. Upon receipt of the form the vendor would place it in an envelope, affix it to the outside of the package, clearly mark the package "Unaccompanied Tourist Shipment," and send the package to the traveler, generally via mail, although it could be sent by other means. If sent through the mail, the package would be examined by Customs and forwarded to the Postal Service for delivery. Any duties due would be collected by the mailman. If the shipment arrives other than through the mail, the traveler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customhouse. Any duties due would be collected at that time.

§ 148.111 Written declaration for unaccompanied articles.

The baggage declaration, Customs Form 6059-B, of a person (the crewmembers declaration, Customs Form 5129, in the case of a returning crewmember) arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States shall be in writing if it covers articles which do not accompany him and:

(a) The articles are entitled to free entry under the $600 exemption provided by item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), or

(b) The articles are noncommerical importations of limited value subject to a flat rate of duty under item 869.10 of the tariff schedules.

§ 148.112 Evidence of purchase.

A sales slip, invoice, or other evidence of purchase, shall be presented with the declaration for all unaccompanied articles.

§ 148.113 Declaration, entry, and collection of duty.

(a) *Declaration and entry for unaccompanied articles*—(1) *Declaration.* A baggage declaration covering articles for which a claim of free entry, in whole or in part, is made under the $600 exemption provided by item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), or a baggage or crewmembers declaration covering articles for which the flat rate of duty provision of item 869.10 of the tariff schedules appears to be applicable, shall be accompanied by a Declaration of Unaccompanied Articles, Customs Form 255. Customs Form 255 shall be prepared in triplicate by the vendor or declarant for each shipment of declared articles not accompanying the person. A shipment consists of one or more packages or containers sent as a unit.

(2) *Verification.* The Customs officer shall verify the information from the declaration, sales slip, invoice, or other evidence of purchase furnished by the person. The completed Customs Form 255 shall be validated by the Customs officer and two copies given to the person.

(b) *Collection of duty.* Duties shall be collected before release of the articles, after their arrival in the United States, as provided in § 145.12 or § 148.115.

§ 148.114 Shipment of unaccompanied articles.

One copy of the validated Customs Form 255 shall be returned to the vendor. The vendor shall place the form in an envelope, affix it to the outside of the shipment, and clearly mark the outside of the shipment "Unaccompanied Tourist Shipment."

§ 148.115 Release of shipment.

(a) *Release after examination.* Unaccompanied tourist shipments—

(1) To which the personal exemption provided in item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), is applicable, or

(2) For which entry is made under the flat rate of duty provisions of item 869.10 of the tariff schedules, or under those provisions in conjunction with the regular rate of duty provision of another item of the tariff schedules, shall be released if:

(i) The shipment is properly marked and accompanied by a validated copy of Customs Form 255,

(ii) The examining Customs officer is satisfied that the contents of the shipment are as stated on the Customs Form 255 and, if applicable, that they are properly classified,

(iii) The declared value conforms to the fair retail value in the country of acquisition, and

(iv) In respect to shipments for which entry is made under item 869.10, any duties found to be due are paid.

(b) *Removal of Customs Form 255.* The copy of Customs Form 255 attached to the shipment shall be removed by the Customs officer and retained for Customs purposes.

(c) *Missing Customs Form 255.* If a validated copy of Customs Form 255 does not accompany the shipment, entry shall be made under the provisions of part 141 or 145 of this chapter.

(d) *Restricted or prohibited shipments.* No shipment containing prohibited or restricted merchandise for which exemption is claimed under item 813.31 of the Tariff Schedules of the United States (19 U.S.C. 1202), or for which entry is claimed under item 869.10 of the tariff schedules, shall be released except upon compliance with the provisions of part 12 and §§ 145.51 through 145.59 of this chapter, and other applicable laws and regulations.

(e) *Verification of claim.* The district director may withhold release of any shipment for which exemption is claimed under item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), or for which entry is claimed under item 869.10 of the tariff schedules, to verify the validity of the claim. If he is unable to verify the claim, the merchandise shall be released under the provisions of part 141 or 145 of this chapter.

§ 148.116 Claim for refund.

Any person who has filed a declaration of unaccompanied articles under §§ 148.112 and 148.113 and who is dissatisfied with the amount of duty assessed on the articles upon their arrival in the United States may file a claim for administrative review under subpart C, part 145, of this chapter if the articles arrived by mail, or under parts 173 and 174 if the articles arrived other than by mail. Any supporting documents, including a copy of Customs Form 255, should be submitted with the claim.

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 159—LIQUIDATION OF DUTIES

§ 159.6 [Amended]

1. Sections 159.6 (a), (b), (c), and (d) are amended by substituting "$10" for "$3" wherever "$3" appears in the paragraph headings and text.

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 162—INSPECTION, SEARCH, AND SEIZURE

§§ 162.32, 162.43, 162.45, 162.46, 162.47, and 162.48 [Amended]

1. Sections 162.32(b), 162.43(c), 162.45, 162.46, 162.47(a), and 162.48 are amended by substituting "$10,000" for "$2,500" wherever "$2,500" appears in the headings and text.

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 174—PROTESTS

1. Part 174 is amended by adding a new § 174.32 to read as follows:

§ 174.32 Publication.

Within 120 days after issuing a protest review decision, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR Part 1 and 19 CFR Part 103.

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 177—ADMINISTRATIVE DECISIONS

1. The heading of § 177.0 and § 177.10(a) are amended to read as follows:

§ 177.10 Publication of decisions.

(a) *Generally.* Within 120 days after issuing any precedential decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. For purposes of this paragraph a precedential decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR Part 1, 19 CFR Part 103, and 19 CFR 177.8(a)(3).

* * * * *

2. The second sentence of § 177.10(e) is amended by substituting "FEDERAL REGISTER" for "Customs Bulletin."

3. Section 177.11(b)(7) is amended to read as follows:

§ 177.11 Requests for advice by field offices.

* * * * *

(b) *Certain current transactions—*

* * * * *

(7) *Publication.* Within 120 days after issuing an internal advice memorandum, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR Part 1 and 19 CFR Part 103.

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

R. E. CHASEN,
Commissioner of Customs.

Approved: October 11, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-30095 Filed 10-24-78; 8:45 am]

[6560-01-M]

Title 40—Protection of the Environment

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER A—GENERAL

[FRL-988-6]

PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Interim Final Rule for Administrative Actions Under Water Quality Management Program

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule for administrative actions under water quality management program.

SUMMARY: Based upon the authority in section 511(c)(1) of the Clean Water Act (Act), EPA has determined that the environmental impact statement requirements contained in 40 CFR Part 6 will not be applied to the water quality management (WQM) program authorized by section 208 of the Act. The amendment implements this determination.

DATE: Effective date: October 25, 1978. Written comments may be submitted. Comments must be received by December 26, 1978.

ADDRESS: Comments are to be mailed to the Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 Attention: Thomas Sheckells.

FOR FURTHER INFORMATION CONTACT:

Thomas Sheckells, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; telephone 202-755-0790.

SUPPLEMENTARY INFORMATION: EPA has determined that this amendment is consistent with section 511(c)(1) of the Act. The WQM program, however, will still continue to follow procedures consistent with 40 CFR Part 6 and the requirements of the National Environment Policy Act (NEPA) other than section 102(2)(C).

The WQM public participation process requires that sufficient information and opportunities for involvement in the decisionmaking process be provided the public. Public participation must be provided early and continue through the WQM process so that the public can understand and participate in the WQM plan and its implementation. This includes full public disclosure of alternatives and potential adverse environmental impacts throughout the plan development, planning, and implementation phases. Also, the WQM process requires analysis and presentation of the social, economic, and environmental impacts of carrying out the WQM plan. As a result, a detailed environmental assessment is required to be prepared through a process which is as rigorous and open to public input as the procedures established under section 102(2)(C) of NEPA. This assessment must be included and circulated as a component of every WQM plan and plan update.

Prior to taking any approval actions on a WQM plan each regional administrator must ascertain that these public involvement and environmental assessment requirements have been met. The regional administrator shall note any plan recommendations that must be addressed in subsequent NEPA section 102(2)(C) actions required for decision under section 201 or 402 of the Act. However, it remains the prerogative of the regional administrator to require an EIS on any WQM plan approval action.

EPA is entering a critical stage of the WQM program where individual WQM plans are being submitted for approval. In view of this timing factor, this revision will take effect on an interim basis.

Dated: October 19, 1978.

BARBARA BLUM,
Acting Administrator.

40 CFR Part 6 is amended as follows:

Subpart E—Guidelines for Compliance With NEPA in the Title II Wastewater Treatment Works Construction Grant Program

1. The heading of Subpart E is revised as set forth above.

2. The second sentence in § 6.102(a) is revised to read as follows and (j) is revoked and reserved:

§ 6.102 Definitions.

(a) * * * For facilities plans as defined in § 6.102(k), the assessment must be an integral, though identifiable, part of the plan submitted to EPA for review.

* * * * *

(j) (Reserved)

3. Section 6.106(a)(3) is revised to read as follows:

§ 6.106 Applicability.

(a) * * *

(3) For wastewater treatment works construction grants under title II of

FWPCA, as amended, those administrative actions in § 6.504.

* * * * *

§ 6.400 [Amended]

4. The language "or section 209 plans" in the second sentence of § 6.400 is revoked.

§ 6.500 [Amended]

5. The language "and the areawide waste treatment management planning program" in § 6.500 is revoked.

§ 6.504 [Amended]

6. Section 6.504(a)(1) is revoked and reserved.

7. Section 6.504(b)(3) is amended by adding the language "or approval of a section 208 plan" after the term "grant".

§ 6.510 [Amended]

8. The comma after the term "plan" in the introductory text of § 6.510 is deleted and the language "208 plan or other appropriate water quality management plan" is revoked.

§ 6.512 [Amended]

9. Section 6.512 is amended as follows:

(A) The language "or section 208" in paragraphs (a) and (d) is revoked;

(B) The language "or section 208 plan" in paragraphs (c), (e), and (g) is revoked;

(C) Paragraph (a)(4)(vi) is revoked;

(D) The sentence "Hearings should be held in section 208 plans." and the language "or the 208 water quality management strategy" in paragraph (b) are deleted; and

(E) Paragraph (f) is revised to read:

(f) *Scope of EIS.* It is the regional administrator's responsibility to determine the scope of the EIS. The regional administrator should determine if an EIS should be prepared on a facilities plan(s) or voluntarily for a section 208 plan, and which environmental areas should be discussed in greatest detail in the EIS.

10. Section 6.514 is revised to read:

§ 6.514 Content of environmental impact statements.

EIS's for treatment works or facility plans shall be prepared according to § 6.304.

[FR Doc. 78-29975 Filed 10-24-78; 8:45 am]

[6820-24-M]

Title 41—Public Contracts and Property Management

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 195]

PART 1-19—TRANSPORTATION

Vendor Prepaid Transportation Charges

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment adds procedures regarding vendor prepaid transportation charges applicable to Government procurements of personal property. These procedures make it easier for suppliers to obtain payment for transportation charges involving small dollar amounts. The amendment provides that, where Government suppliers cannot provide a receipted freight bill to substantiate a transportation charge of $100 or less, payment may be made if the charge has otherwise been determined to be reasonable. The intended effect of the amendment is to eliminate the rigid requirement that receipted freight bills be obtained where the amount involved is $100 or less. The general requirement for substantiation of prepaid transportation charges remains applicable, regardless of the monetary amount of the charges, whenever such substantiation is reasonably available.

EFFECTIVE DATE: November 27, 1978, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT:

Philip G. Read, Director of Federal Procurement Regulations, 703-557-8947.

The table of contents for part 1-19 is amended by adding the following entry:

Sec.
1-19.204 Transportation charges in the procurement of personal property.

Subpart 1-19.2—Transportation Factors in the Procurement of Personal Property

Section 1-19.204 is added as follows:

§ 1-19.204 Transportation charges in the procurement of personal property.

(a) Domestic procurements of personal property made on an f.o.b. point of origin basis (see § 1-19.302) may be shipped on a Government bill of lading, on a commercial bill of lading for subsequent conversion to a Government bill of lading, or on a commercial bill of lading as provided in the Federal Property Management Regulations (see 41 CFR 101-41.303-1 and 2). The transportation charges may be prepaid by the vendor when shipment is made on a commercial bill of lading.

(b) Commercial forms and procedures may be used for shipments in which the transportation charges ordinarily do not exceed $100 per shipment and in the occasional situation that does not exceed that monetary limitation by an unreasonable amount (see 41 CFR 101-41.304-2). When the transportation cost is prepaid by the vendor and subsequently included on the vendor's invoice to the Government, the invoice shall identify separately the cost of transportation and the cost of the material being delivered. In such cases, the vendor shall verify the cost of transportation by including a copy of the receipted freight bill with the invoice.

(c) The requirement for obtaining a receipted freight bill is subject to the two exceptions which follow.

(1) A receipted freight bill is not required when the vendor cannot reasonably provide the receipted bill. In such instances, an invoiced, unsupported transportation charge of $100 or less for a transaction; i.e., purchase, invoice, aggregate billing, or payment for multiple purchases, may be paid if the charge has been determined to be reasonable. Shipments and invoices shall not be split in order to bring the transportation cost under $100. The basis for determining the reasonableness of the charge may include, or be based upon, one of the following:

(i) Past experience (authenticated transportation charges for similar shipments);

(ii) Rate checks;

(iii) Copies of freight bills submitted by the vendor; or

(iv) Other information submitted by the vendor to substantiate the amount claimed.

(2) A receipted freight bill is not required when reimbursement is made pursuant to a contract requiring the contractor's retention of records for a period not less than 3 years from the date of final payment under the contract. In such instances, an invoiced, unsupported transportation charge of $100 or less may be paid, provided that the contractor certifies that the transportation charges have been paid, and that evidence in support of such certification of payment will be furnished upon the request of the Government.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).)

Dated: October 10, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-29999 Filed 10-24-78; 8:45 am]

[6820-24-M]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

[FPMR Amdt. G-46]

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

Subpart 101-38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

MOTOR VEHICLE AND TRANSPORTATION MANAGEMENT

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation updates the list of organizational activities of the Department of Health, Education, and Welfare (DHEW), which have been granted unlimited exemptions by GSA from displaying U.S. Government tags and other identification. This regulation is necessary to show the full extent of DHEW's exemption.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

Section 101-38.602(f) is revised to read as follows:

§ 101-38.602 Unlimited exemptions.

* * * * *

(f) *Health, Education, and Welfare, Department of.* Motor vehicles operated by the Food and Drug Administration in undercover law enforcement and similar investigative work; motor vehicles operated by St. Elizabeths Hospital in out-patient work where the identification of the vehicle would be prejudicial to the patient; one vehicle operated by the National Institutes of Health in transporting mentally disturbed children; and motor vehicles operated by the Office of Investigations and Office of the Inspector General that are used for law enforcement and investigative purposes.

* * * * *

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).)

Dated: October 4, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-30000 Filed 10-24-78; 8:45 am]

[4310-84-M]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[OR-14341, OR-17491]

PUBLIC LAND ORDER

Oregon; Revocation of Executive Orders No. 4848 and No. 5033

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This action will restore 80 acres of land to operation of the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: November 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Orders No. 4848 and No. 5033 of April 2, 1923, and January 19, 1929, respectively, which withdrew the following described public lands for use by the State of Oregon as lookout stations are hereby revoked:

WILLAMETTE MERIDIAN

T. 7 S., R. 7 W.,
Sec. 9, NW¼NW¼.
T. 40 S., R. 7 E.,
Sec. 15, SW¼SE¼.
The areas described contains 80 acres in Polk and Klamath Counties.

2. At 10 a.m. on November 23, 1978, the land shall be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Lands.

3. At 10 a.m. on November 23, 1978, the lands will be open to location under the U.S. mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oreg. 97208.

GUY R. MARTIN,
Assistant Secretary of the Interior.

OCTOBER 18, 1978.

[FR Doc. 78-30092 Filed 10-24-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21039; FCC 78-713]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Reflecting the Availability of Land Mobile Channels in the 470-512 MHz Band in 13 Urbanized Areas of the United States

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In earlier stages of this proceeding the FCC decided that two UHF TV channels would be used for land mobile radio purposes in each of our Nation's 10 largest cities. In addition, one UHF TV channel would be used for land mobile radio purposes in three other major cities. It was also decided that the major portion of each of these channels would be used for industrial, land transportation, and public safety radio systems and that 10 percent of each of the channels would be used for common carrier car telephone systems. The result is that 12 car telephone channels are carved out of each UHF TV channel. The purpose of this order is to resolve the controversies which have prevented the FCC from assigning licenses to the car telephone companies.

In the order, the FCC decided that any qualified applicant may apply for a license to operate. In other words, in order to receive a license, an applicant does not already have to be a car telephone company. Rather, the applicant need only demonstrate that it is qualified to operate a car telephone system.

The FCC adopted a plan in which all of those that receive licenses will share the channels. A customer of a company can "seize" a car telephone channel and use it for the duration of the telephone call. Once the call is completed, the channel is available for use by any customer of any of the companies licensed to use the channels.

The FCC also established cutoff dates for filing applications in order that the companies can negotiate technical arrangements with each other. Those that apply after the cutoff date must abide by the technical arrangements decided by those that applied before the cutoff date.

Lastly, the FCC established technical standards for the use of the car telephone channels.

EFFECTIVE DATE: December 26, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

S. R. McConoughey, Common Carrier Bureau, 202-632-6400.

SUPPLEMENTARY INFORMATION:

Adopted: October 5, 1978.

Released: October 16, 1978.

By the Commission.

In the matter of Amendment of part 21 of the rules to reflect the availability of land mobile channels in the 470-512 MHz band in 13 urbanized areas of the United States, memorandum opinion and order (proceeding terminated). See 42 FR 13309.

1. This proceeding is a continuation of docket No. 18261. (See below for the history of that docket.) The purpose of this document is to resolve the controversies which have prevented usage of the frequencies in the 470-512 MHz band in the domestic public land mobile radio service (DPLMRS).

BACKGROUND

2. This proceeding was initiated by a notice of proposed rulemaking on July 17, 1968 (14 FCC 2d 297), in which we considered means for providing additional spectrum space to meet the needs of land mobile radio services in major population centers. That notice was followed by our first report and order (23 FCC 2d 325 (1970), in which we adopted rules to provide for use of a maximum of two of the lower seven UHF TV channels, on a shared basis with television broadcasting, by land mobile stations within 50 miles of the center of the 10 largest urbanized areas. However, we left open assignment principles and specific frequencies to be designated for each of the land mobile services. Subsequently, in a notice of proposed rulemaking, released January 28, 1971 (27 FCC 2d 371), we proposed decisions on those matters, and rules to implement the decisions. With respect to the domestic public land mobile radio service (DPLMRS), we proposed 12 frequency pairs (for each television channel to be shared), for use by nonwire line common carriers (more commonly called radio common carriers or RCC's). We further stated that use of the frequencies was to be limited to those licensees authorized at that time to serve the areas involved.

3. After comments and reply comments were received, we issued our second report and order (30 FCC 2d 221) on June 22, 1971. In that document we assigned frequencies, adopted rules, and set out in § 21.501(k)(1), as well as related sections, provisions for the DPLMRS. However, we also concluded that there was no support in the record for the conclusion that ruinous competition would result from allowing new carriers to enter these markets, and so we decided in favor of "open entry," that is, the frequencies would not be limited to existing carriers.

4. After release of that document we received petitions for partial reconsideration from the National Association of Radiotelephone Systems (NARS)[1] and from a group of RCC's directed against our "open entry" decisions in the DPLMRS. Both petitioners also requested a stay of that portion of the order, to allow them to make a showing that would justify "closed entry," that is eligibility limited to existing licensees. On August 9, 1971, we issued a memorandum opinion and order (31 FCC 2d 48 (1971)) granting the petition for stay of effective date and the petition for partial stay, and postponing the effective date of allocation of frequencies to the DPLMRS pending action on the petitions for partial reconsideration.

5. On March 15, 1974, we proposed to extend the land mobile UHF TV sharing to Houston, Dallas/Fort Worth, and Miami, fourth further notice of proposed rulemaking (45 FCC 2d 1093). By our fifth report and order issued July 17, 1974 (48 FCC 2d 360), this was done, including provisions for DPLMRS operations. Docket No. 18261 was terminated at that time, except with respect to disposing of petitions for reconsideration.

6. In our memorandum opinion and order and notice of proposed rulemaking issued on January 31, 1977 (63 FCC 2d 126), we denied the petitions for reconsideration seeking "closed entry" and reaffirmed our policy of permitting "open entry" to these new frequencies, thus terminating the proceedings for docket No. 18261. We proposed to make these frequencies available only on a joint-use basis, that is any user could "seize" an idle channel and use it exclusively for the duration of a call. At the end of the call, the channel would be released and available to the next user. Where a "group" of 12 such channels is trunked, greater use can be made of the individual radio channels than if each carrier had fewer "exclusive" channels. Implementation of this concept could be accomplished by carriers either sharing a common terminal or using wireline or "off-the-air" monitoring to "seize" a channel if operating through separate terminals. Because each licensee would not be obtaining the exclusive use of these channel frequencies, applicants would not be required to submit a showing of public need for the proposed facilities. There would be no "cutoff" dates because applications would not be mutually exclusive. We proposed that a system of 12 trunked channels would be considered loaded when there were 100 mobile subscriber units per channel. No further market entry would be authorized at that point. Finally, we proposed that frequency assignments in cities where two television channels were allocated to DPLMRS would consist of the base station frequencies on one TV channel and the mobile frequencies on the other TV channel. We solicited comments and reply comments on these proposals. A list of parties who submitted filings is contained in appendix A.[2]

SUMMARY OF THE COMMENTS

7. Most of the comments received were directed at our frequency sharing plan. Some of the parties suggested that the sharing of the Guardband[3] paging frequencies has not worked as well as anticipated and that sharing of two-way frequencies is much more complicated, technically and otherwise, than sharing of one-way frequencies. It was suggested that a common terminal under the control of one operator be used. Others commented that a limited number of licenses be given out. Then, if the channels are not substantially loaded within a certain period of time, new entrants should be allowed. One party suggested that one group of 12 channel pairs be used by existing licensees and that the other group of 12 channel pairs be used by new entrants to the market, while others urged that all 24 channel pairs be allocated to one licensee. An association of RCC's argued that allowing new entrants would delay service to the public because in this association's city the existing carriers are already organized to share the frequencies. The Commission was criticized for not making an adequate finding

[1] NARS has recently changed its name to Telocator Network of America.

[2] On Mar. 10, 1977, NARS filed a petition for reconsideration, praying that we reconsider our Jan. 31, 1977 order to the extent that such order was intended to constitute final agency action. However, in our present order, we have considered all of the issues raised, including those discussed by NARS in its petition for reconsideration. Accordingly, we are dismissing the NARS petition.

[3] Docket No. 16783, 12 FCC 2d 841, recon. denied, 14 FCC 2d 269, aff'd sub nom. *Radio Relay Corporation* v. *FCC* 409 F. 2d 322 (2d Cir. 1968).

that open entry serves a useful public purpose. Many comments were opposed to allowing open entry for an unlimited period of time. It was argued that the abrogation of a time cutoff rule for filing of applications was merely a promotion of competition for the sake of competion without a resulting public benefit.

8. Some parties suggested that we not eliminate the requirement for demonstrating a public need for the proposed facilities. It was argued that there is a difference between the Commission finding in a rulemaking that the public needs additional facilities and the Commission stating that an applicant need not demonstrate that it can satisfy the public need. In fact, it was suggested that the Commission enact strict threshold requirements for the entire application as a method of eliminating unqualified applicants.

9. Several parties supported our proposal that we waive the requirement of State certification and allow an applicant to file an application with the Commission pending the outcome of proceedings at the State level. One party objected to this proposal.[4]

10. In general, our proposal for large scale automatic trunked frequencies was supported as an efficient use of the spectrum. Our proposal of pairing base and mobile frequencies across television channels was supported as a practical solution to the problem of one of the television channels being unavailable for base station use but available for mobile use in some areas. One party argued against the pairing on the grounds that there may not be enough market demand for two 12-channel pairs and that the second pair should be allocated only after the first pair is allocated. It added that on the other hand, if the pairing is across television channels, one of the channels would be unable to revert back to television use.

11. Many of the parties objected to a traffic loading of 100 subscriber mobile units per channel. It was suggested that a lower number of subscriber mobiles per channel be used because subscribers complain about channel access when there is loading at the level proposed. Some parties urged that the RCC's decide when channels are fully loaded while others argued that the FCC should audit loading to ascertain whether the channels are fully utilized.

12. Although some parties supported our proposal of not allowing one-way signaling on a secondary basis because it would reduce the efficiency of the two-way service, others favored allocating some channels to tone-plus-voice paging. One comment suggested paging on the two-way channels, provided that it would be offered on a noninterfering basis.

13. One manufacturer supported our proposed rulemaking and commented that the equipment that would provide for off-the-air monitoring of other base stations and channel seizure would raise the cost of equipment by only 3 percent.[5] Others contended that the off-the-air monitoring devices would substantially raise the cost of equipment. It was also suggested that the required rapid signaling would only minimize interference when stations were attempting to seize channels, but would not eliminate such interference.[6] One party suggested that because only one manufacturer has stated that it can supply the required equipment, the result of our rulemaking may be to create a monopoly for the manufacturer.

14. One broadcasting company objected to the fact that we would not specifically be notifying the UHF TV stations in the event of waivers of television protection criteria. A broadcaster's association objected to any allocations in the 470-512 MHz band to DPLMRS on the grounds that these allocations were supposed to be temporary. It was suggested that the DPLMRS use the 806-947 MHz spectrum. The New Jersey Public Broadcasting Authority (NJPBA) indicated that it was planning on filing an application to use channel 19 to provide a New Jersey oriented public broadcasting station. The use of channel 19 in Philadelphia for DPLMRS allegedly would interfere with NJPBA's proposal.

15. In its comments, NARS included a counterproposal, suggesting that we license the frequencies (in 12-channel groups) for operation on a single, integrated "carrier's carrier" trunked system basis in each of the markets affected. Each of the "carrier's carriers" would construct and operate base station facilities. They would wholesale air time on a nondiscriminatory basis to each of the RCC's who would in turn retail two-way communications service to the public. A copy of the NARS counterproposal is attached as appendix B.

16. The reply comments addressed the suggestions made by some of the parties. There was disagreement over whether the frequencies should be reassigned to television use and whether the allocation to DPLMRS was permanent or temporary. There was also disagreement over whether one-way signaling should be allowed on these frequencies.

17. Numerous reply comments addressed the NARS counterproposal. Some parties endorsed it, but offered some minor changes. Others disagreed with NARS. It was suggested that the NARS counterproposal would be more attractive if the base station operator were allowed to make a larger profit. It was also suggested that all 24 channels be allocated to one base station operator. One carrier urged that the "carrier's carrier" need only serve a substantial portion of the service area rather than the entire area, and that the "carrier's carrier" be able to apply for a specific block of frequencies. Some reply comments opposed the NARS counterproposal on the basis that it would further delay the ultimate outcome of the proceedings. Some parties feared that allowing "carrier's carriers" would be anticompetitive with respect to new applicants and would therefore discourage open entry into the market.

Discussion

A. Frequency Allocation

18. Some of the comments filed suggested that we reallocate the frequencies to broadcast use. However, the issues raised have been carefully considered in earlier stages of this proceeding and new arguments have not been raised. Accordingly, we reaffirm our position of allocating the frequencies in the market areas involved to the land mobile radio services.[7]

19. The New Jersey Public Broadcasting Authority (NJPBA) had indicated that it was interested in using TV channel 19 as an educational station at a site on top of the World Trade Center in New York but would be unable to do so because of the present allocation of channel 19 to land mobile use in Philadelphia. It requested that we reallocate channel 19 to broadcast use. We will deny the request of NJPBA. Even if channel 19 were not available for land mobile use in Philadelphia, the NJPBA proposal would still be infeasible because it would cause harmful cochannel interference to station WCDC at Adams,

[4] This issue has now been resolved by our recent decision in docket No. 20870, FCC No. 78-559, released Aug. 9, 1978, where we eliminated the requirement of demonstrating any requisite State or local operating franchise or authority at the time of filing an application.

[5] Rydax suggested that § 21.501(8)(i) of the rules, which requires that cochannel transmitters employ a "busy mark" tone to indicate that a channel is being used, define the busy mark as a subaudible tone at a standardized frequency and depth of modulation.

[6] One manufacturer suggested that there was no need for faster signaling on the grounds that the time for signaling is already fast, and that a shorter time would not increase efficiency.

[7] Two-hundred and forty (240) land mobile frequencies (120 channel pairs) were derived from each television channel. The DPLMRS frequencies considered herein represent only 12 channel pairs or 10 percent of the total. The remaining 90 percent are available for the industrial, public safety, and land transportation services; in some cities this portion of the spectrum has been totally assigned and is currently in use.

Mass. Furthermore, as mentioned in note 7, supra, 90 percent of the spectrum space for television channel 19 is available for the industrial, public safety, and land transportation services. Many of these frequencies are already in use in the Philadelphia area. Thus, to reallocate channel 19 in Philadelphia from land mobile use to broadcast use would not only be a costly process, but has not been demonstrated to outweigh the public interest benefits provided by the present allocation of the channel.

20. Some of the parties suggested that the channel sharing plan for television channels 14–20 was a temporary measure until regulations and equipment on the 900 MHz band could be implemented. They added that since 900 MHz systems are being implemented, the Commission should set an early date for land mobile to vacate the channels so that they can be reallocated to broadcasting. This issue has been raised previously in the docket No. 18261 proceedings. In our memorandum opinion and order released on September 24, 1970 (25 FCC 2d 764), we stated at paragraph 15:

> NAEB's request that we limit the sharing plan to a 5-year period will be denied. We do not believe this is desirable or appropriate. We think that the appropriate course to follow is that announced in the report and order, docket 18261 (see par. 41); that is, to evaluate the sharing plan after a 5-year period and, based on our experience with it and on circumstances then obtaining, to make whatever revisions, if any, that may be in the public interest.

Id. at 770. We see no reason to change our views at this time. While we did not review the sharing plan in 5 years as we said we would, we initiated a formal staff investigation of the future spectrum requirements of UHF television when we created an Offshore Radio Telecommunications Service (ORTS). See docket No. 20363, 60 FCC 2d 463, 468 (1976). We therefore are continuing to monitor the use of UHF frequencies and will make the necessary reallocation if such future need arises. We also note that the 900 MHz band is not yet fully ready for commercial use. While regular licensing is proceeding in the conventional and trunked bands, we presently are in the process of granting only developmental licenses for DPLMRS use in the cellular bands.

21. Some parties suggested that we not assign base station frequencies on one television channel and mobile station frequencies on the other television channel in cities where two television channels have been allocated for land mobile use. They argue that we could license the frequencies on one channel. If it does not fill up, the other channel could revert to television use. We point out, however, that the present frequency assignment is necessary because in many cities only one of the television channels can be effectively utilized for base station operations. Thus, if we do not pair base and mobile frequencies across television channels, we would end up confining operations to one television channel, resulting in a reduction of the number of available DPLMRS channels by one-half.

22. We also note that the assignments under discussion are in our largest urban areas where there is a growing demand for additional two-way radio service. See paragraph 48, infra. We therefore cannot accept the argument that there is insufficient need for two television channels for land mobile use in each of these market areas. Additionally, we observed in note 7, supra, that most of the available land mobile channels have already been licensed by the Safety and Special Radio Services Bureau. Therefore, reallocation to broadcast use would not be a simple task or one for which there is sufficient public interest need at this time.

23. One party objected to the fact that the Common Carrier Bureau would not specifically be notifying the UHF TV stations in the event of waivers of the television protection rules.[8] We do not see this as a problem, however, because the Common Carrier Bureau will coordinate any such waivers with the Broadcast Bureau. The Broadcast Bureau will have the option of notifying its potentially affected licensees.

24. Some of the parties suggested that we either allocate some of the frequencies for one-way signaling use or that we allow subaudible paging. Although we recognize that in the urbanized centers we are dealing with in this proceeding there may exist a substantial unsatisfied demand for tone-plus-voice paging services, we find that the mixture of one-way signaling (paging) on channels employed in a multichannel trunked system could substantially diminish trunking efficiency and accordingly the grade of service to the mobile subscribers. Thus we conclude that these frequencies be made available solely for mobile telephone services except for that signaling necessary to establish and maintain communications with mobile units. We propose to address the demand for additional paging channels in separate proceedings.

B. OPEN ENTRY V. CLOSED ENTRY

25. In the notice of proposed rulemaking released on January 28, 1971, we proposed that the use of the frequencies in the 10 market areas then involved would be limited to those licensees authorized at that time to serve the areas involved. Our belief at the time was that ruinous competition would result from allowing new carriers to enter these markets. We subsequently concluded in our second report and order released on June 22, 1971, that there was no support in the record for a policy of "closed entry," and we therefore decided in favor of "open entry," that is, the frequencies would not be limited to existing carriers.

26. We have recently reviewed the FCC form L data available [9] for the RCC's located within a 50-mile radius of the center of the 10 largest urbanized areas. The review focused on determining whether DPLMRS operations were reporting profits or losses. In the event profits were reported, the rate of return on investment was analyzed. The rate of return figure was calculated on the book value (item 22 on form L) and not on total investment.

[8] The 50 dB cochannel and 0.0 dB adjacent channel protection criteria were implemented by imposing a "worst-case" basis, i.e. the base station located 50 miles from the metropolitan center, the mobile ranging 30 miles beyond this, high terrain elevating the mobile antenna 100 ft, 200 W mobile transmitters, etc. We do not propose to relax the protection criteria but rather to permit an applicant to submit an engineering showing that he meets the protection criteria if his proposed system has parameters less than the "worst-case."

[9] Our analysis is based on those companies that filed a form L for 1976. We are also limited by the fact that there is no uniform system of accounts governing RCC's. There is thus a lack of consistency among the data items being reported. This problem is particularly troublesome in the case of items relating to depreciation.

Market	Number of reports analyzed	Number of call signs showing profits	Largest profits (in dollars)	Average profits (in dollars)	Low profits (in dollars)	Number of call signs showing losses	Largest losses (in dollars)	Average losses (in dollars)	Low losses (in dollars)	Average rate of return for call signs showing a profit *
New York	25	18	250,028	47,352	236	7	(35,955)	(8,400)	(504)	0.194
Philadelphia	15	14	377,523	34,262	212	1	(5,484)	(5,484)	(5,484)	0.139
Chicago	11	9	104,544	36,819	3,677	2	(9,603)	(5,336)	(1,068)	0.375

Market	Number of reports analyzed	Number of call signs showing profits	Largest profits (in dollars)	Average profits (in dollars)	Low profits (in dollars)	Number of call signs showing losses	Largest losses (in dollars)	Average losses (in dollars)	Low losses (in dollars)	Average rate of return for call signs showing a profit *
Los Angeles	16	12	49,383	17,449	1,519	4	(5,000)	(3,879)	(1,000)	0.275
Detroit	9	3	65,320	36,218	3,918	6	(22,309)	(9,520)	(6,960)	0.899
Boston	13	10	343,184	44,787	486	3	(150,022)	(58,220)	(790)	0.125
San Francisco	15	10	199,069	51,384	1,976	5	(24,139)	(11,038)	(1,541)	0.367
Washington	21	17	107,076	22,111	5,518	4	(11,180)	(6,116)	(7,167)	0.371
Pittsburgh	5	5	39,104	17,025	5,740	0				0.204
Cleveland	9	3	39,104	17,336	5,740	6	(24,950)	(8,331)		0.286
Total	128139	101	157,433	34,227	2,902	38	(32,071)	(11,891)	3,060	.2719

* The average rate of return calculations does not include 6 call signs for which the calculated rate of return was greater than 1.0 because such data is suspect.

27. The results are summarized below. Some comment concerning the results will follow.

28. The profitability of the DPLMRS operations seems to have improved sharply when compared with similar data gathered in 1970. In 1970, 39 percent of the DPLMRS operations in the large urban areas reported losses. This figure was down to 27.7 percent in 1976. A review of all forms L for the miscellaneous common carriers for 1976 showed that 38 percent were operating at a loss. This indicates that the carriers in large urban areas were relatively better off than their counterparts in less densely populated areas. For the large urban areas, the 1970 study showed that the average DPLMRS income was only $8,860. From the 1976 reports, it appears that the average profit for these firms showing a profit was $34,227. Note that the income reported on the form L is after tax income. While it is true that some extremely high values have distorted the average upward, the lowest average profit figure reported for an urban area was $17,025.

29. The average rate of return on investment, calculated on the book value of the investment, was 27.1 percent. There are no comparable figures available for 1970. However, a return of 27.1 percent is high regardless of the criteria used. The rate of returns ranged from a low of 12.5 percent in Boston to a high of 37.5 percent in Chicago. The rate of return of 89.1 percent of that is shown for Detroit is discounted because there are only three operators reporting profits.

30. A word of caution on the operations reporting losses is in order. Because of the way the accounts are structured, firms can report excessively high amounts for salaries and wages or depreciation. Firms in this category would be reporting an accounting loss although they could be, in a real sense, very profitable. An analysis of the call signs which reported losses showed that, on the average, the call signs had been in existence for 7 years. Only 3 of the 34 call signs showing losses have been in existence for less than 2 years. Firms losing money and still remaining in business for any considerable period of time are a paradox. This, of course, would indicate that these call signs are either not losing money or, perhaps, are showing a loss for tax or other purpose.

31. Whatever the actual profit figures, it is clear that the urban DPLMRS industry is a mature, profitable business. With the constant demand for new frequencies and the historical growth in traffic, we find that there is a growing demand for DPLMRS services. Accordingly, we reaffirm our conclusion that "open entry" will not result in ruinous competition to existing carriers. We find that "open entry" provides the public with a greater choice of service than "closed entry." We therefore will allow "open entry" in the market areas involved in this rulemaking procedure.

C. THE FREQUENCY SHARING PLAN

32. We have carefully reviewed the various comments received concerning our proposed frequency sharing plan and have decided, with the exceptions noted below, to adopt the plan proposed in our January 31, 1977 Order. In adopting this plan, we recognize that no one plan is perfect. Nevertheless, we find that the public will benefit from better spectrum utilization if we provide for groups of 12 trunked channels. We also find that our plan provides for the greatest degree of flexibility in implementing trunked channel systems. Each market area has its own unique problems, and no particular approach will work for all market areas. The rules that we are adopting recognize this problem. Therefore, if there exists a market where the carriers cannot agree on using a common terminal as a means of managing the joint-use of frequencies, then independently the carriers can use wireline or "off-the-air" monitoring to coordinate separate terminals to prevent seizure of a busy channel.

33. Although one party suggested that we allocate one group of 12 frequencies to existing carriers and the other group to new market entrants, we see no basis in law or fact for this proposal. The markets involved are highly competitive, and we find no public interest considerations for granting any group favored treatment.

34. Some parties suggested that we assign all 24 channel pairs as a single group rather than assign two groups of 12 channel pairs. We reject this suggestion. The spectral efficiencies achieved from assigning groups of 12 channel pairs are a result of the fact that the 12 channel pairs can be trunked together. No additional spectral efficiencies can be achieved from assigning all 24 channel pairs as a single group because the two 12 channel groups are separated by 3 MHz. At the present state of the art, it appears that technical problems in both transmitter and receiver design preclude a reasonable expectation that a mobile unit covering a 24-channel system with this frequency spread can be made commercially to operate with an acceptable grade of service. Thus, no additional trunking efficiencies can be achieved by assigning all 24 channel pairs as a single group. Although we will not be assigning all 24 channel pairs as a single group, we nevertheless will allow a single entity to apply for both 12 channel pairs, and our rules do not prohibit granting a permit to operate on both of these 12 channel pairs in those cities where two groups of 12 channel pairs are available.

35. Some of the parties suggested that the Guardband frequency sharing plan [10] has not worked; and, based on their experience, they do not expect the frequency sharing plan to work in the present proceeding. Nevertheless, the parties have not submitted any data to substantiate their claim; and, to the best of our knowledge, the Guardband frequency sharing plan is working.

D. CHANNEL LOADING

36. We have received numerous comments criticizing our proposal that we allow up to 1,200 subscriber mobile units on a group of 12-trunked channels. For such a 12-channel system, Motorola suggests 360 to 480 subscribers, depending on waiting time assumptions; Rydax suggests 900 sub-

[10] See docket No. 16788, 12 FCC 2d 841, recon. denied, 14 FCC 2d 269, aff'd sub nom. *Radio Relay Corporation* v. *FCC*, 409 F. 2d 322 (2d Cir. 1968).

scribers, based on queueing and campon; and Airsignal suggests 696 subscribers, based on its consultation with major RF manufacturers, with call-waiting assumptions unspecified.

37. Thus, there seems to be no one figure for "mobiles per channel" which is widely accepted. The responses imply that there is a wide divergence in call rates and holding times. Therefore, we find considerable merit in suggestions that call rates and holding times, or their product, channel usage, should be taken into account in determining channel loading criteria. This is the substance of the suggestion of the Association of Maximum Service Telecasters, Inc., which points out, correctly, that the Commission has been on record previously expressing its doubts on frequency assignments based solely on the number of mobiles.

38. Each authorization will initially allow each carrier to operate 40 mobile units per channel provided that the total number of mobile units for all carriers operating on a 12-channel group of frequency pairs within a given metropolitan area does not exceed 40 mobile units per channel. Prior to Commission authorization, the carriers will be required to submit to the Commission an agreement containing a method of informing each other of how many mobile units are on each of their systems in order that the total number of units on the 12-channel group of frequency pairs within their metropolitan area does not exceed 40 mobile units per channel. This agreement will be considered to be part of the technical coordination discussed in paragraph 45 infra and required by section 21.501(l)(8) of the rules.

39. We realize that 40 mobile units per channel is a conservative figure; however, we will increase the number of authorized mobile units per channel, based upon the actual channel usage for each system. It is thus our goal to alter the number of mobile units authorized until optimum channel usage is attained.

40. In reviewing the recommendations for maximum channel usage figures, we find the difference to be smaller than those for "mobiles per channel." Motorola suggests an initial busy-hour level of 80 percent average usage, which may reach 90 percent as a practical limit. Airsignal suggests 80 percent average busy-hour channel usage. Rydax suggests 100 percent. We believe that a figure for maximum channel usage for 12 channels should be on the conservative side, though still within the range recommended. Based on these considerations, we have decided that 12-channel systems in trunked interconnection service shall be limited to 85 percent average channel usage during the busy hour.

41. There will thus be an initial authorization of 40 mobile units per channel on a 12-channel group of frequency pairs. Once this figure is attained, any carrier may apply for an increase in the number of authorized units. The proposed new number of authorized units should be based on an estimate of the number of units that would result in 85 percent average channel usage during the busy hour. This estimate should be calculated based on traffic load studies. The traffic load studies as well as the method of calculation should accompany the application.

42. As mentioned, we are aware of the paucity of hard data concerning optimum channel usage. It is our intention to review the 85-percent maximum average busy-hour channel utilization figure as experience from new systems becomes available, keeping in mind possible differences among individual localities. See section 21.501(l)(10)(d) of the new rules which will allow for variations of the 85-percent figure if good cause is shown.

E. "CUTOFF" RULES

43. Many parties are opposed to our proposal to abrogate a time "cutoff" rule for filing applications. They argue that initial licensees and their investors cannot determine the risk of investment because the competition cannot be ascertained as of the date of commencement of construction because other licensees could enter the market at any time. They thus contend that this creates a high risk investment, causing investors either to charge high interest rates or not to finance the proposed construction.

44. We find that the parties that have made the above arguments failed to submit any factual data in support of their claims. On the other hand, in our discussion of "open entry" versus "closed entry," see paragraphs 24–30, supra, we found that in general, the RCC's in many of the metropolitan areas under discussion are operating on a financially sound basis. In the past, we have found that competition allows for the public to choose between different systems, techniques, and ideas. Cf. *General Mobile Radio Service*, 13 FCC 1190, 1218 (1949). This allows the public to get the best possible service at the lowest cost available. Because we will allow assignment of the spectrum in groups of 12 channel pairs, a time "cutoff" rule may limit the number of applicants, and thus the extent of competition necessary to give the public a choice of service. Accordingly, we find that our proposal to eliminate the usual time "cutoff" rule [11] for the frequencies under discussion is in the public interest.

45. Nevertheless, we find a compelling public interest consideration in assigning the frequencies as soon as possible in order to meet the public demand for mobile service. See, e.g., *Fourth Further Notice of Proposed Rulemaking*, 45 FCC 2d 1093 (1974); *Second Report and Order*, 30 FCC 2d 221, 233 (1971); *First Report and Order*, 23 FCC 2d 325 (1970). The concept of frequency assignment embodied herein is for the system to "search and seize" an idle channel when traffic is presented to it. Technically this is quite simply done when there is one system operator, manager or terminal. While we have suggested the possibility of multiple carriers operating through a single common control terminal, we also have recognized that they may choose not to do so. In this event, technical coordination between separate systems becomes necessary. We suggested two possibilities, wireline ties between systems and off-the-air monitoring, to accomplish this. For this and other technical arrangements it is essential to be able to identify other participants in order that technical design arrangements can be made to insure that users will have exclusive interference free use of the channel during calls. Section 21.501(l)(8) requires that applicants in a single market area submit plans to the Commission to demonstrate interference free operation with each other. In order that applicants may know with whom to work out technical arrangements in order to provide for interference free operation, some type of "cutoff" rule is needed. Otherwise, rather than work out technical arrangements, applicants may wait indefinitely to see who else will file. This would defeat any possibility of promptly implementing facilities so that the public may be served.

46. Accordingly, we are instituting a time "cutoff" rule for the limited purpose of facilitating technical arrangements between applicants in the same metropolitan area. Commencing with the effective date of this order, any qualified party may apply for a construction permit. For any given market area, all applicants who file within 60 days of the public notice announcing the filing of an application for that market area will be required to work out technical arrangements with each other as required by section 21.501(l)(8) of the rules. Any entity which files subsequent to this 60-day period must conform its application to be technically compatible with whatever technical arrangements are worked out by those who filed within

[11] Sec. 21.31(b)(2) of the Commission's rules provides for "cutoff" dates for mutually exclusive applications.

the 60-day period. For the purposes of this proceeding, a market area is considered to be the territory within a 50-mile radius of the center of each of the 13 cities under discussion.

47. In other words, full open entry will prevail, but those applicants who file within the initial 60-day period will be able to identify other potential participants and participate in establishing the necessary technical arrangements for workable systems. They will then be able to modify their applications to reflect these arrangements. Those that are found to be legally, technically, financally, and otherwise qualified will be granted authorizations. For those who file subsequent to the "cutoff," open entry will also apply provided the proposal is technically compatible with the systems of those who filed prior to the "cutoff." Obviously, those who file subsequent to the "cutoff" but prior to the implementation of the proposals filed prior to the "cutoff" will be given a reasonable opportunity to amend their applications to comply with the technical sharing arrangements adopted by the initial applicants. We wish to emphasize one further matter. The technical compatability required must not operate as a method of stifling competiton. Thus, we will entertain complaints and take whatever actions are necessary, including revocation of licenses, should this requirement prove to be a barrier to entry to new competitors.

F. DEMONSTRATION OF PUBLIC NEED

48. We are reaffirming our position that applicants do not have to demonstrate a showing of public need for their proposed systems. We have already found a need in the market areas concerned for additional mobile services. See *Fourth Further Notice of Proposed Rulemaking*, 45 FCC 2d 1093 (1974); *Second Report and Order*, 30 FCC 2d 221, 233 (1971); *First Report and Order*, 23 FCC 2d 325 (1970). These markets are among the largest in the country, and there currently exist waiting lists for mobile telephone service. Because we will allow a number of applicants to apply for licenses, and because the grant of one license will not preclude the grant of another, we do not see the usual comparative problem of issuing a license to the one who better identifies the market for radiotelephone service.[12] Nor do we see the problem of a party receiving a license but not utilizing the spectrum because new parties may apply for a license at any time and will be eligible for a grant and may use the system if it is not being utilized in accordance with the channel loading criteria discussed in paragraphs 36-42 supra.

G. TECHNICAL COMMENTS

49. In its comments, NARS questioned whether the Rydax system of "off-the-air" monitoring will work. We have carefully considered the comments submitted by Rydax and NARS and have determined that NARS has failed to submit sufficient data to raise a substantial question concerning the technical feasibility of the Rydax system.

50. NARS is also concerned about the need for preventing mobiles from interfering with each other during attempted channel seizures and the need for preventing channel seizure interference between base stations when a multiple base terminal system is used. Although NARS claims that the rules for rapid signaling will only minimize the interference and not eliminate it, NARS has failed to submit sufficient information to demonstrate that any possible interference will lead to an unacceptable grade of service.

51. Motorola, on the other hand, questions the need for rapid signaling if a common base terminal is used. We fail to understand Motorola's question, however, since section 21.501(l)(8(ii) will apply only when multiple base terminal systems are used.

52. Lastly, Rydax suggested that the Commission specify standards for "off-the-air" monitoring as described in section 21.501(l)(8)(i) in order to avoid the problem of antagonistic competitors who might pick unusual or discontinuous methods of busy marking. Rydax suggested that transmitters be marked with a subaudible tone at a standardized frequency and depth of modulation. We appreciate the suggestions made by Rydax, but do not see the need for enacting a rule. Section 21.501(l)(8) of the rules will require that permittees submit details on how interference free operation will be accomplished.

53. Throughout this proceeding, various parties have expressed concern over the anticompetitive effects of our proposed rulemaking. As we noted in paragraph 47, supra, we will not hesitate to take action to prevent anticompetitive conduct arising out of our frequency sharing proposal. At this time, however, we do not find the potential anticompetitive concern to be sufficiently serious to outweigh our consideration of the public benefits to be derived from the plan that we are adopting today. With regard to the "carrier's carrier" approach, we do have serious reservations both as to its potential anticompetitive effects as well as the licensing difficulties inherent in such a plan. Although parties are free to propose such an approach, or any other alternative which appears to be reasonable, we will review any such plan with the idea in mind that such a plan may not be designed so as to limit competition. Finally, with regard to the fact that at this time Rydax is the only company that claims that it can provide "off-the-air" monitoring at a reasonable cost, we do not find this to be an anticompetitive problem. Our rules do not prevent any other manufacturer from designing and developing equipment for "off-the-air" monitoring, and in any event, "of-the-air" monitoring, must still compete with other methods of technical coordination.

54. In view of the foregoing, *it is ordered*, That, pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, part 21 of the rules is amended as shown below. The reporting requirement included in § 21.501(l)(10) below is adopted subject to General Accounting Office clearance and, unless advised to the contrary, these rule changes will be effective December 26, 1978.

55. *It is further ordered*, That the proceeding in docket No. 21039 is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX A

Comments:
- Airsignal International, Inc.
- American Broadcasting Co., Inc.
- Association of Maximum Service Telecasters, Inc. (MST).
- Metropolitan RCC Corp.*
- Motorola, Inc.
- The National Association of Radiotelephone Systems (NARS).**
- Rydax, Inc.
- Singnal Telephone Corp.

Reply comments:

[12] Neither is there a problem of a party being deprived of its right to a comparative hearing. See *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945). All parties that file an application within 60 days after the public notice date of the first application for an assignment of a particular 12-channel group of frequency pairs in that metropolitan area are jointly required to comply with sec. 21.501(l)(8) of the rules. Construction permits will not be issued until after compliance with sec. 21.501(l)(8) is achieved. Thus, all parties who file within the 60-day period will receive their authorizations at the same time and will have an equal opportunity to load their systems with mobile units. Any party that files after the 60-day period is filing with the understanding that the channels may be loaded to capacity by the time it is ready to operate. Nevertheless, the party is not denied any *Ashbacker* rights because it had an opportunity to file an application within the initial 60-day period.

*These comments were originally misplaced by the Commission, but were later resubmitted by Metropolitan RCC Corp.

**NARS has recently changed its name to Telocater Network of America.

Airsignal International, Inc.
Illinois Association of Radiotelephone Systems, Inc.
Land Mobile Communications Council.
MST.
NARS.
Public Broadcasting Service.
Radio Broadcasting Co.
Radio Relay New York Corp., Radio Relay Corp.—Illinois, Radio Relay Corp.—Michigan, and Radio Relay Corp.—California.
Signal Telephone Corp.

Supplemental reply comments (late filed):
MST.
Radio Broadcasting Co.

Petition for reconsideration:
NARS.

Motion for extension of time in which to file comments:
NARS.

Motion for extension of time in which to file reply comments:
NARS.
New Jersey Public Broadcasting Authority.

APPENDIX B

THE NARS COUNTERPROPOSAL †

1. As may be discerned from its previous comments, due to the inherent characteristics of the allocations at issue, NARS is not certain that the frequencies could be successfully implemented even under the most idealized environment and circumstances. Nevertheless, in view of its extensive objections to the Commission's proposal, NARS has devoted considerable time and effort toward attempting to develop an alternative approach which it believes would be more desirable.

2. In this endeavor, NARS was neither unmindful of, nor unsympathetic to, the practical difficulties faced by the Commission and its staff in attempting to license these frequencies on a fair and equitable basis. Similarly, NARS is in full accord with the Commission's view that the frequencies should be made available for public service at the earliest practicable time, without unwarranted procedural delays. At the same time, the paramount governing consideration was NARS's view that the least cost and most spectrally efficient systems possible should be designed.

3. * * * NARS wishes to emphasize, however, that it cannot warrant that the allocations are practicably workable even under its plan (although it seemed to be favorably received by most of the carriers in the affected markets with which NARS informally consulted). Nevertheless, NARS believes that if the allocations are practicably usable at all, its plan offers the best possibility of doing so on an acceptable economic and regulatory basis.

4. Basically, what NARS is proposing is that the Commission license the frequencies (in 12-channel groups) for operation on a single, integrated "carrier's carrier" trunked system basis in each of the markets affected. Under this concept, the Commission would first accept applications from persons or entities (except wireline telephone companies and RF equipment manufacturers) proposing to construct and operate the necessary base station facilities (including the interconnect lines, terminals, transmitters, antennas, etc.) to provide signal coverage throughout the entire service area in a given market. A separate base station operator could be licensed for each 12-channel group, if necessary,[1] but a single entity licensed for all 24 channels would not be prohibited if the applicants jointly agreed to it.

5. Applicants would not specify the particular frequencies applied for; they would specify only whether one or both of the 12-channel groups is being applied for. As an indispensable part of the plan, the normal cutoff rule established by § 21.31 would apply. Thus, the number of contenders for base station system licensing would be definitely established for both regulatory and planning purposes at an early time.

6. Also as an indispensable part of the plan, any application which did not include a showing that the full service area would be provided coverage would be returned as not acceptable for filing, and would not be entitled to comparative consideration. The essential purpose of this requirement is to weed out at the threshold any applicant that is not genuinely interested in or capable of becoming a carrier's carrier.

7. After the cutoff period has expired, if the applications for the 12-channel groups do not exceed the number of such groups available, all pending applications could be granted as soon as the Commission has satisfied itself that the requisite legal criteria for such grant have been met.[2] If the applications exceed the number of available 12-channel groups, they would be processed according to the following criteria:

a. If the total number of qualified entities proposing base station operations do not exceed the number of 12-channel groups, available, each such entity will be licensed only for one 12-channel group unless a voluntary agreement to the contrary is reached prior to grant. However, application processing would not be held up pending interparty negotiations in this regard.

b. If the total number of qualified entities proposing base station operations exceeds the number of 12-channel groups available, a hearing designation order would be issued as soon as possible, but in no event later that 90 days after the expiration of the cutoff period, unless a voluntary settlement was reached prior to such issuance. The order would designate all applications for hearing on an expedited basis. Application processing would not be held up pending interparty negotiations.

8. In this regard, NARS believes that the possibility of comparative hearings having to be held is more theoretical than real. The base station operation itself would not appear to be an overwhelmingly attractive business proposition, in light of the large initial investment required and the many practical problems associated with the allocations. Thus, it is doubtful that many applications will be filed. Those applicants who do file would likely desire to pool their risks as much as possible; hence, there is a high probability that they would voluntarily consolidate their proposals to reduce the number of entities down to the number of 12-channel groups available, thereby avoiding the expense of a hearing.

9. Further, the knowledge that they would definitely be required to prosecute their applications on a timely basis undoubtedly would have a salutary impact upon their willingness and ability to reach a voluntary accord. Thus NARS believes that the probability of actually having hearings is de minimis.[3]

10. The base station operator would have complete discretion in establishing the signaling and other technical parameters of the system, so long as automatic trunking techniques were employed and integrated system coverage is provided throughout the service area. One of the key advantages of such an approach is that existing technology could be employed in the network design, thereby reducing the cost of the fixed plant and enabling the operator to solicit genuinely competitive bids for systems from various manufacturers. This approach would also eliminate any need for the Commission to establish signaling and related technical standards in the rules.

11. Other advantages include the ability to optimize coordination of base stations so as to eliminate wastefully duplicative facilities with their attendant cost burden on the public. Also, with such coordinated system planning, frequency reuse may be possible in some of the markets, which would otherwise be difficult or impossible if independent systems were operating on the same frequencies. In addition, it would enable the base station operator to establish system traffic and loading criteria according to his own best business judgment, which would eliminate the need for the Commission to establish arbitrary standards.

12. The quid pro quo for this arrangement is that the base station operator would be precluded from retailing any communication service or mobile equipment to the public, but could only wholesale air time and associated items (such as number assignments) as a common carrier offering to qualified RCC's operating in the market. In turn, the RCC's would retail the service and equipment to the public. The retail RCC's would be separately licensed for the mobiles they lease to the public, which would also be authorized to operate on any of the frequencies in the 12-channel group. Therefore, no procedural complications such as MX'd applications should arise at the Commission with respect to the retail RCC's themselves. Subscribers would also have the option of being separately licensed for their own mobiles and obtaining a COAME service-only rate from any "interconnected" retail RCC.

13. The base station operator would be required to deal with the retail RCC's in the

† Paragraphs and footnotes have been renumbered.

[1] It is believed that 12-channel groups are the minimum that would make such a business venture economically viable, but it is recognized that further economies of scale might be realized by encompassing all 24 channels in a single system. If the applicants jointly agree to such a plan it should be permitted; if they do not, the frequencies would be licensed in separate 12-channel groups.

[2] In theory, such grant could be made before the expiration of the cutoff period. However, in practice it is unlikely that such a "clean" application would be filed that it could be adequately processed in less than 60 days.

[3] Nevertheless, despite this view, NARS concedes that there is a possibility, however slight, that one or more comparative hearings may be required under its plan. In NARS's opinion, however, there is no lawful way to absolutely exclude such a possibility under the Act; but the NARS proposal is the most reasonable and practicable method that has been suggested for reducing to relative insignificance the practical likelihood of such an event.

area on a nondiscriminitory basis for "interconnection" purposes, under familiar common carrier statutes and precepts. As a practical matter, it may be expected that the base station operators most likely would be consortia (separate corporations, partnerships or joint ventures) of principals of existing RCC's in a market. It is expected and contemplated that the existing RCC's affiliated with the base station operator would also be authorized to retail the service in competition with other, nonaffiliated retail RCC's. However, the base station operator would be required to treat nonaffiliated retail RCC's no less favorably than affiliated retail RCC's.

14. One of the advantages of such an approach also is that if some existing RCC's in a market, but not all, can agree upon a system plan, those that can agree can proceed with their plan without being frustrated by the minority. The minority would then have the choice of developing its own plan and capital investment, or of "interconnecting" with the first group when the system is constructed. Thus, the minority could not be frozen out of the market as a result of its independence or its financial limitations.

15. Since the base station operator would have a substantial investment in the fixed network plant, but could only realize a return on that investment through the actual use of the channels by subscribers, he would have every incentive to encourge loading of the system in the shortest possible time. At the same time, by maintaining control over an affiliated retail RCC, he would not be left completely at the mercy of others (with no vested interests in the network plant) for his ability to earn a reasonable return. Similarly, he would have every incentive to maintain the quality of service as high, and the cost of service as low, as possible in order to maintain its saleability. State regulation of the base station operator would also be available to correct or forestall any problems in the relationships between the wholesale and retail carriers that might arise.

16. Finally, since it is unlikely that the requisite state certification is now held in the name of the precise entity(ies) which would actually be the licensee of the base station facilities, it would appear to be inappropriate and unnecessary to require prior state certification for the base station applicants as a condition of filing the application with this Commission. However, obtaining such certification would be required prior to grant of a construction permit, in order to conform to the legal requirements of the Communications Act. Since no retail service would be involved in such certification proceedings, this requirement should not delay implementation of service. Prior state certification would continue to be a requirement for new retail RCC's entering a given market.

17. In the foregoing discussion, NARS has attempted both to outline its proposal thoroughly, and to anticipate likely questions as to how it would work in actual practice. Similarly, NARS has attempted to highlight the advantages of its plan in terms of implementing the instant allocations on the most efficient, simplest and most economical basis possible. NARS believes its proposal accommodates the Commission's public policy objectives on a reasonable basis, in the context of a workable business and public service proposition. Accordingly, NARS urges that the rules and policies advanced herein be adopted by the final order in this proceeding.

I. Part 21—Domestic Public Radio Services (other than Maritime Mobile) subpart C is amended as follows:

Existing 21.501 (k) and (l) are revised to read as follows:

§ 21.501 Frequencies.

* * * * *

(k) The following frequencies are available for assignment to stations in the Domestic Public Land Mobile Radio Service operated by miscellaneous common carriers operating in the listed urbanized areas and subject to the limitations contained herein:

Base station frequencies (MHz)	Mobile, dispatch, and auxiliary test frequencies (MHz)
Boston	
Channel 14	Channel 16
Group 1:	
470.0125	482.0125
470.0375	482.0375
470.0625	482.0625
470.0875	482.0875
470.1125	482.1125
470.1375	482.1375
470.1625	482.1625
470.1875	482.1875
470.2125	482.2125
470.2375	482.2375
470.2625	482.2625
470.2875	482.2875
Group 2:	
473.0125	485.0125
473.0375	485.0375
473.0625	485.0625
473.0875	485.0875
473.1125	485.1125
473.1375	485.1375
473.1625	485.1625
473.1875	485.1875
473.2125	485.2125
473.2375	485.2375
473.2625	485.2625
473.2875	485.2875
Chicago, Cleveland, New York—Northeastern New Jersey	
Channel 14	Channel 15
Group 1:	
470.0125	476.0125
470.0375	476.0375
470.0625	476.0625
470.0875	476.0875
470.1125	476.1125
470.1375	476.1375
470.1625	476.1625
470.1875	476.1875
470.2125	476.2125
470.2375	476.2375
470.2625	476.2625
470.2875	476.2875
Group 2:	
473.0125	479.0125
473.0375	479.0375
473.0625	479.0625
473.0875	479.0875
473.1125	479.1125
473.1375	479.1375
473.1625	479.1625
473.1875	479.1875
473.2125	479.2125
473.2375	479.2375
473.2625	479.2625
473.2875	479.2875
Channel 14	Channel 15
Dallas-Fort Worth	
Channel 16	
482.0125	485.0125
482.0375	485.0375
482.0625	485.0625
482.0875	485.0875
482.1125	485.1125
482.1375	485.1375
482.1625	485.1625
482.1875	485.1875
482.2125	485.2125
482.2375	485.2375
482.2625	485.2625
482.2875	485.2875
Detroit	
Channel 16	Channel 15
Group 1:	
482.0125	476.0125
482.0375	476.0375
482.0625	476.0625
482.0875	476.0875
482.1125	476.1125
482.1375	476.1375
482.1625	476.1625
482.1875	476.1875
482.2125	476.2125
482.2375	476.2375
482.2625	476.2625
482.2875	476.2875
Group 2:	
485.0125	479.0125
485.0375	479.0375
485.0625	479.0625
485.0875	479.0875
485.1125	479.1125
485.1375	479.1375
485.1625	479.1625
485.1875	479.1875
485.2125	479.2125
485.2375	479.2375
485.2625	479.2625
485.2875	479.2875
Houston	
Channel 17	
488.0125	491.0125
488.0375	491.0375
488.0625	491.0625
488.0875	491.0875
488.1125	491.1125
488.1375	491.1375
488.1625	491.1625
488.1875	491.1875
488.2125	491.2125
488.2375	491.2375
488.2625	491.2625
488.2875	491.2875
Los Angeles	
Channel 20	Channel 14
Group 1:	
506.0125	470.0125
506.0375	470.0375
506.0625	470.0625
506.0875	470.0875
506.1125	470.1125
506.1375	470.1375
506.1625	470.1625
506.1625	470.1825
506.2125	470.2125
506.2375	470.2375
506.2625	470.2625
506.2875	470.2875
Group 2:	
509.0125	473.0125
509.0375	473.0375
509.0625	473.0625
509.0875	473.0875
509.1125	473.1125
509.1375	473.1375
509.1625	473.1625
509.1875	473.1875

Channel 20	Channel 14
509.2125	473.2125
509.2375	473.2375
509.2625	473.2625
509.2875	473.2875

Miami

Channel 14	
470.0125	473.0125
470.0375	473.0375
470.0625	473.0625
470.0875	473.0875
470.1125	473.1125
470.1375	473.1375
470.1625	473.1625
470.1875	473.1875
470.2125	473.2125
470.2375	473.2375
470.2625	473.2625
470.2875	473.2875

Philadelphia

Channel 19	Channel 20
Group 1:	
470.0125	506.0125
500.0375	506.0375
500.0625	506.0625
500.0875	506.0875
500.1125	506.1125
500.1375	506.1375
500.1625	506.1625
500.1875	506.1875
500.2125	506.2125
500.2375	506.2375
500.2625	506.2625
500.2875	506.2875
Group 2:	
503.0125	509.0125
503.0375	509.0375
503.0625	509.0625
503.0875	509.0875
503.1125	509.1125
503.1375	509.1375
503.1625	509.1625
503.1875	509.1875
503.2125	509.2125
503.2375	509.2375
503.2625	509.2625
503.2875	509.2875

Pittsburgh

Channel 14	Channel 18
Group 1:	
470.0125	494.0125
470.0375	494.0375
470.0625	494.0625
470.0875	494.0875
470.1125	494.1125
470.1375	494.1375
470.1625	494.1625
470.1875	494.1875
470.2125	494.2125
470.2375	494.2375
470.2625	494.2625
470.2875	494.2875
Group 2:	
473.0125	494.0125
473.0375	494.0375
473.0625	494.0625
473.0875	494.0875
473.1125	494.1125
473.1375	494.1375
473.1625	494.1625
473.1875	494.1875
473.2125	494.2125
473.2375	494.2375
473.2625	494.2625
473.2875	494.2875

San Francisco

Channel 17	Channel 16
Group 1:	
488.0125	482.0125
488.0375	482.0375
488.0625	482.0625
488.0875	482.0875
488.1125	482.1125
488.1375	482.1375
488.1625	482.1625
488.1875	482.1875
488.2125	482.2125
488.2375	482.2375
488.2625	482.2625
488.2875	482.2875
Group 2:	
491.0125	485.0125
491.0375	485.0375
491.0625	485.0625
491.0875	485.0875
491.1125	485.1125
491.1375	485.1375
491.1625	485.1625
491.1875	485.1875
491.2125	485.2125
491.2375	485.2375
491.2625	485.2625
491.2875	485.2875

Washington, D.C.

Channel 18	Channel 17
Group 1:	
494.0125	488.0125
494.0375	488.0375
494.0625	488.0625
494.0875	488.0875
494.1125	488.1125
494.1375	488.1375
494.1625	488.1625
494.1875	488.1875
494.2125	488.2125
494.2375	488.2375
494.2625	488.2625
494.2875	488.2875
Group 2:	
497.0125	491.0125
497.0375	491.0375
497.0625	491.0625
497.0875	491.0875
497.1125	491.1125
497.1375	491.1375
497.1625	491.1625
497.1875	491.1875
497.2125	491.2125
497.2375	491.2375
497.2625	491.2625
497.2875	491.2875

(l) Frequencies in paragraph (k) of this section are for assignment in, or in the vicinity of, the urbanized areas listed in table A below, subject to the following conditions:

(1) The transmitter site(s) for base station(s) shall be located not more than 50 miles from the geographic center of an urbanized area as defined in table A.

(2) Mobile stations shall be operated not more than 80 miles from the "Geograhic Center" of an urbanized area as defined in table A, below, nor beyond a 30-mile radii of the associated base station or stations.

(3) Base stations operating on the frequencies available for land mobile use in any listed urbanized area shall afford protection to cochannel and adjacent channel television stations in accordance with the values set out in tables B and C, below, except for channel 15 in New York, N.Y., and Cleveland, Ohio, and channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in tables C and F, below.

(i) Base stations shall be located a minimum of one mile from local television stations operating on TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

(ii) Mobile units operating on the frequencies available for land mobile use in any given urbanized area shall afford protection to cochannel and adjacent channel television stations in accordance with the values set out in tables D and G, below, except for channel 15 in New York, N.Y., and Cleveland, Ohio, and channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in tables E and G below.

(iii) The television stations to be protected in any given urbanized area, in accordance with the provisions of (i) and (ii) of this paragraph, are identified in the Commission's publication, "TV Stations To Be Considered in The Preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz." The publication is available at the offices of the Federal Communications Commission at Washington, D.C. or upon the request of interested persons.

(4) For antenna heights between 500 feet and 3,000 feet above average terrain the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure A below, except for channel 15 in New York, N.Y., and Cleveland, Ohio, and channel 16 in Detroit, Mich., where the effective radiated power must be reduced in accordance with figure B. For heights of more than 500 feet above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the grade B contour of a cochannel TV station, and authorization will not be granted unless it can be shown that actual terrain considerations are such as to provide the desired protection at the grade B contour, or that the effective radiated power will be futher reduced so that, assuming free space attenuation, the desired protection at the grade B contour will be achieved.

(5) Applicants for base stations in the Miami, Fla. urbanized area may, in lieu of calculating the height of average terrain, use 10 feet as average terrain height.

(i) Tables and figures:

TABLE A—*Frequency Availability for Land Mobile Use*

Urbanized area	Geographic center		Frequencies MHz)
	N. latitude	W. longitude	
Boston, Mass	42°21'24"	71°03'24"	Chan. 14 470-476.
			Chan. 16 482-488.
Chicago, Ill	41°52'28"	87°38'22"	Chan. 14 470-476.
			Chan. 15 476-482.
Cleveland, Ohio[2]	41°29'51"	81°41'50"	Chan. 14 470-476.
			Chan. 15 476-482.
Dallas, Tex	32°47'09"	96°47'37"	Chan. 16 482-488.
Detroit, Mich[3]	42°19'48"	83°02'57"	Chan. 15 476-482.
			Chan. 16 482-488.
Houston, Tex	29°45'26"	95°21'37"	Chan. 17 488-494.
Los Angeles, Calif	34°03'15"	118°14'28"	Chan. 14 470-476.
			Chan. 20 506-512.
Miami, Fla	25°46'37"	80°11'32"	Chan. 14 470-476.
New York, Northeastern New Jersey	40°45'06"	73°59'39"	Chan. 15 470-476.
			Chan. 15 476-482.
Philadelphia, Pa	39°56'58"	75°09'21"	Chan. 19 500-506.
			Chan. 20 506-512.
Pittsburgh, Pa	40°26'19"	80°00'00"	Chan. 14 470-476.
			Chan. 18 494-500.
San Francisco-Oakland, Calif	37°46'39"	122°24'40"	Chan. 16 482-488.
			Chan. 17 488-494.
Washington, D.C., Maryland, Virginia	38°53'51"	77°00'33"	Chan. 17 488-494.
			Chan. 18 494-500.

[2] Channels 14 and 15 are not available in Cleveland, Ohio, until further order from the Commission.
[3] Channels 15 and 16 are not available in Detroit, Mich., until further order from the Commission.

TABLE B—BASE STATION—COCHANNEL FREQUENCIES
(50 dB Protection)
MAXIMUM EFFECTIVE RADIATED POWER (ERP)

At this distance from transmitter site of protected UHF television station →	Distance in miles	Antenna height in feet (AAT)↓										The effective radiated power (ERP)* and antenna height above average terrain (AAT) shall not exceed the values given in the table. ←
		50	100	150	200	250	300	350	400	450	500	
	165	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
	160	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	800	
	155	1,000	1,000	1,000	1,000	1,000	875	775	700	625	575	
	150	1,000	1,000	850	775	725	625	550	500	450	400	
	145	850	750	650	575	500	440	400	350	320	300	
	140	600	575	475	400	350	300	275	250	230	225	
	135	450	400	335	300	255	240	200	185	165	150	
	130	350	300	245	200	185	160	145	125	120	100	
	125	225	200	170	150	125	110	100	90	80	75	
	120	175	150	125	105	90	80	70	60	55	50	

* Power levels listed in table are given in watts.

NOTE: To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in Table B, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 feet (AAT). If the exact antenna height proposed for the land mobile base station does not appear in Table B, use the power figure beneath the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than that determined hereafter from Table C, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever are the latest. If such maps are not published for the area in question, the next best topographic information should be used.

TABLE C—BASE STATION—ADJACENT CHANNEL FREQUENCIES
MAXIMUM EFFECTIVE RADIATED POWER (ERP)

At this distance from transmitter site of protected UHF television station. →	Distance in miles	Antenna height in feet (AAT)[1]										The effective radiated power (ERP)* and antenna height above average terrain (AAT) shall not exceed the values given in the table. ←
		50	100	150	200	250	300	350	400	450	500	
	67	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
	66	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	750	
	65	1,000	1,000	1,000	1,000	1,000	1,000	1,000	825	650	600	
	64	1,000	1,000	1,000	1,000	1,000	1,000	775	625	500	400	
	63	1,000	1,000	1,000	1,000	1,000	650	450	325	325	225	
	62	1,000	1,000	1,000	1,000	525	375	250	200	150	125	
	61	1,000	1,000	700	450	250	200	125	100	75	50	
	60	1,000	1,000	425	225	125	100	75	50	.....	.....	

* Power levels listed in table are given in watts.

NOTE: To determine the maximum permissible effective radiated power:
(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in Table C, the next lower mileage separation figure is to be used.
(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 feet (AAT). If the exact antenna height proposed for the land mobile base station does not appear in Table C, use the power figure beneath the next greater antenna height.
(3) If the power found to be permitted following this procedure is lower than that determined heretofore from Table F or B, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

TABLE F—BASE STATION—COCHANNEL FREQUENCIES
(40 dB Protection)
MAXIMUM EFFECTIVE RADIATED POWER (ERP)

At this distance from transmitter site of protected UHF television station. →	Distance in miles	Antenna height in feet (AAT)[1]										The effective radiated power (ERP)* and antenna height above average terrain (AAT) shall not exceed the values given in the table. ←
		50	100	150	200	250	300	350	400	450	500	
	130	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
	125	1,000	1,000	1,000	1,000	1,000	1,000	1,000	850	750	725	
	120	1,000	1,000	1,000	1,000	900	750	675	600	550	500	
	115	1,000	1,000	900	725	600	525	475	425	375	350	
	110	850	700	600	500	425	375	325	300	275	225	
	105	600	475	400	325	275	250	225	200	175	150	
	100	400	325	275	225	175	150	140	125	110	100	
	95	275	225	175	135	110	95	80	70	60	50	
	90	175	125	100	75	50	.....	.....	.....	.....	.....	

*Power levels listed in table are given in watts.

NOTE: To determine the maximum permissible effective radiated power:
(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in Table F, the next lower mileage separation figure is to be used.
(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 feet (AAT). If the exact antenna height proposed for the land mobile base station does not appear in Table F, use the power figure beneath the next greater antenna height.
(3) If the power found to be permitted following this procedure is lower than that determined hereafter from Table C, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

TABLE D—DISTANCE BETWEEN ASSOCIATED BASE STATION AND PROTECTED COCHANNEL TV STATION WHERE MOBILE OPERATES IN THE SAME TELEVISION CHANNEL

(50 dB Protection)

Effective radiated power (watts) of mobile unit	*Distance (miles)*
60	140
50	135
25	125
10	117
5	112

TABLE E—DISTANCE IN MILES BETWEEN ASSOCIATED LAND MOBILE BASE STATION AND PROTECTED COCHANNEL TELEVISION STATION WHERE MOBILE OPERATES IN THE SAME TELEVISION CHANNEL

(40 dB Protection)

Effective radiated power (watts) of mobile unit	*Distance (miles)*
60	120
50	115
25	110
10	105
5	100

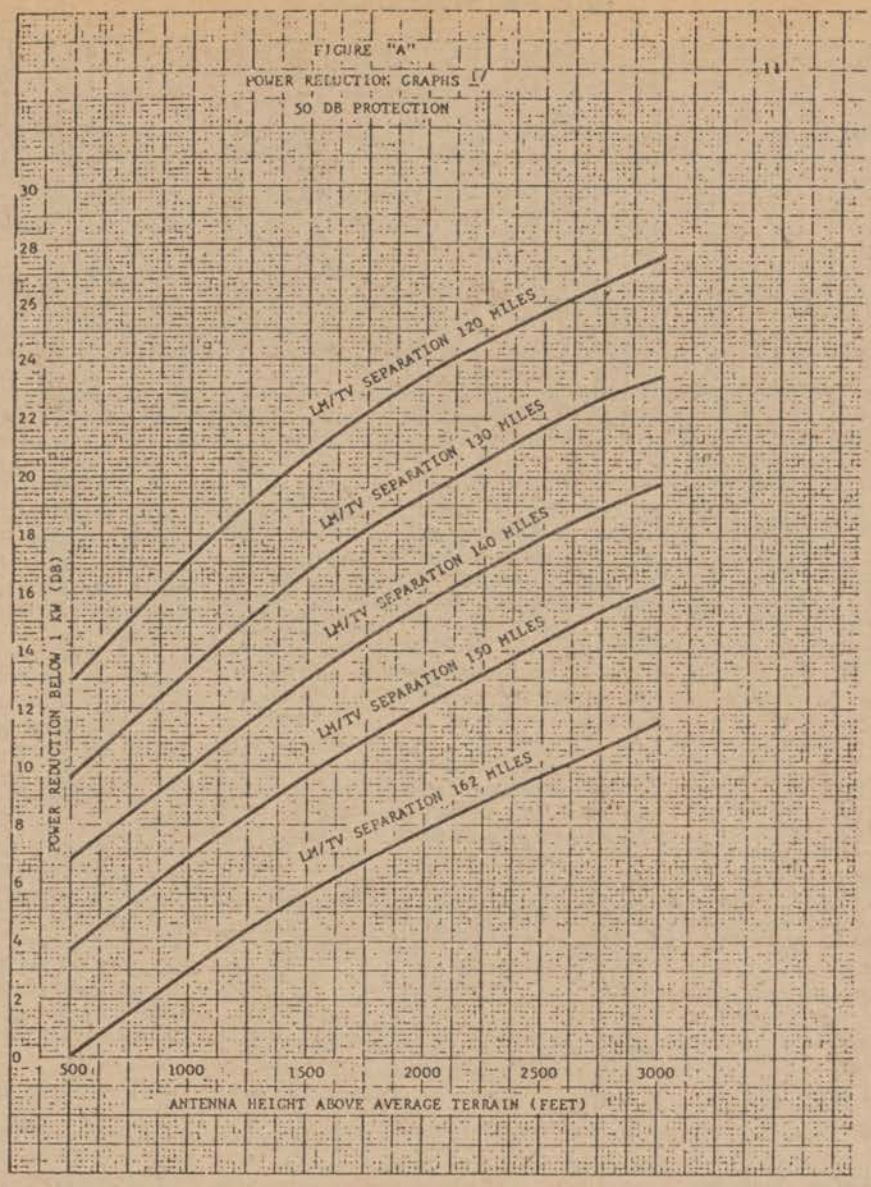
TABLE G—DISTANCE IN MILES BETWEEN ASSOCIATED LAND MOBILE BASE STATION AND PROTECTED ADJACENT CHANNEL TELEVISION STATION WHERE MOBILE OPERATES IN ADJACENT TELEVISION CHANNEL

(0, 0 dB Protection)

Effective radiated power (watts) of mobile unit	*Distance (miles)*
60	90
50	90
25	90
10	90
5	90

TABLE H.—*Decibel Reduction/Power Equivalents*

	E.R.P. permitted (figures rounded)
Decibel reduction below 1 kW:	
1	795
2	630
3	500
4	400
5	345
6	250
7	200
8	160
9	125
10	100
11	80
12	65
13	50
14	40
15	30
16	25
17	20
18	15
19	12
20	10
21	8
22	6
23	5
24	4
25	3
26	2.5
27	2
28	1.5
29	1.25
30	1

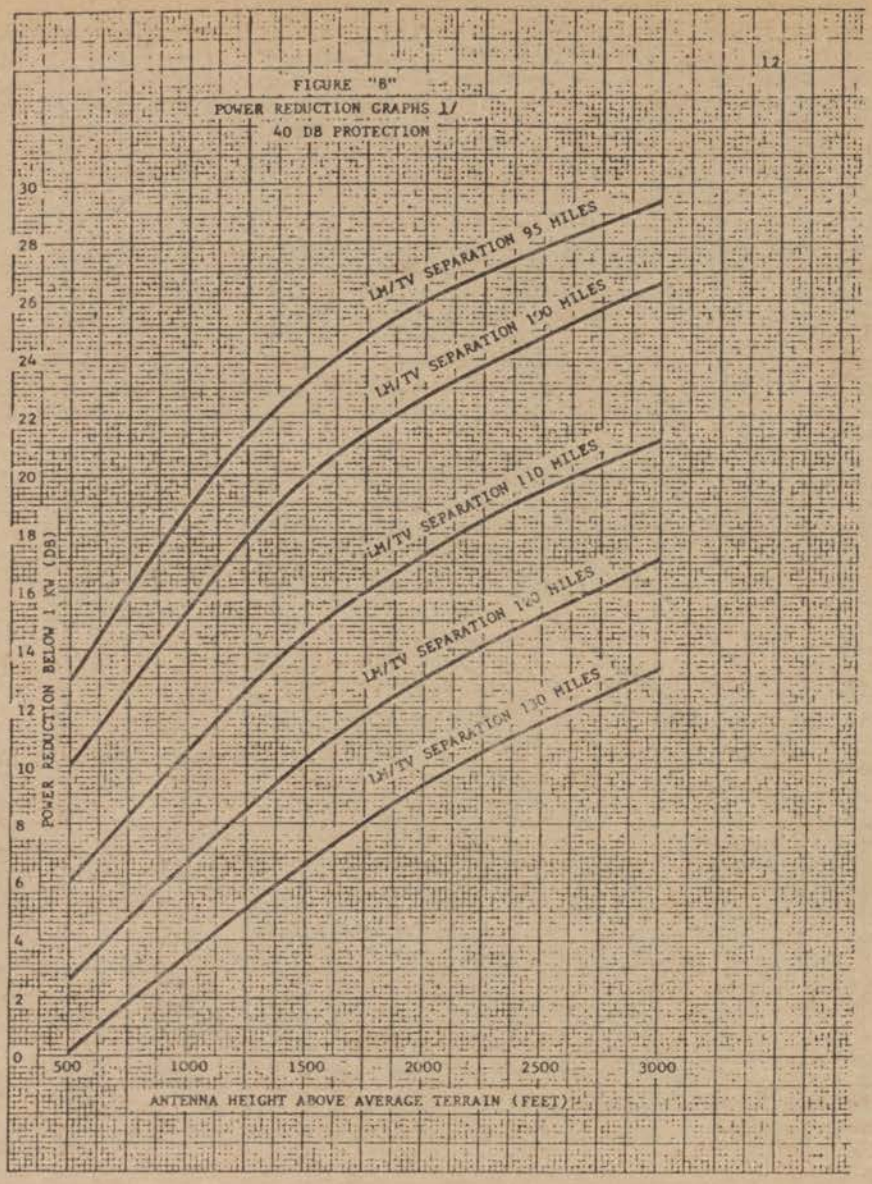


[1] Directions for using this graph.

1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table H for dB/power equivalents

[2] For stations in the Los Angeles urbanized area with antenna elevations 1,500 or more feet above sea level, the maximum authorized effective radiated power (ERP) shall be in accordance with the following table:

Antenna height (ASL) (feet):	*Power (ERP)*
1,501–2,000	155 W.
2,001–2,500	100 W.
2,501–3,000	70 W.
3,001–3,500	50 W.
3,501–4,000	40 W.
4,001–4,500	30 W.
4,501–and above	25 W.



[1] Directions for using this graph.

1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table H for dB/power equivalents.

(ii) Upon prior coordination with the Broadcast Bureau, departures from the separation distances shown in the tables of this section may be authorized upon a specific engineering showing by an applicant that the protection ratios specified (i.e. 50, 40 or 0.0 dB as may be applicable) will be afforded to the protected television station(s) by the applicant's proposed facilities.

(6) These frequencies are to be employed solely for providing land mobile communication services. Signaling communications will be authorized only when employed for the purposes of establishing and maintaining mobile communications and to "mark" a busy channel in order to prevent interference between two or more licensees.

(7) Assignment of frequencies will be made from pairs listed within a single 12-channel group and, in the event of assignment to more than one applicant, will be available only on a cooperative shared basis. In this event, each licensee will be granted exclusive use of a channel only when the channel is idle and then only for the duration of a call or call attempt, after which the channel must be relinquished.

(8) To facilitate interference free operation between two or more systems assigned the same block of frequencies in the same urbanized area, each permittee shall, prior to commencing operation, submit to the Commission copies of agreements and system diagrams and plans illustrating how interference free operation will be accomplished. Submitted plans must contain as a minimum the following provisions:

(i) A means whereby a base station transmitter will be prevented from being keyed when the frequency is in use by any other base station in the area. If this is to be accomplished by off-the-air monitoring of base station transmit frequencies, then each base station must be equipped with a receiver monitoring base station frequencies which is colocated with the base station transmitter and interconnected with the transmitter in such a way that it is impossible to key the associated transmitter upon detection of a signal by the receiver.

(ii) A means to insure rapid selective calling and station identification. Selective calling will be permitted on any channel in a group but may only take place on one channel at a time by any one licensee, and only on idle channels. No more than one (1) second of channel time may be employed for each call attempt, and no more than three (3) attempts are to be made during a one (1) minute period. High-speed signaling must be used for selective calling and station identification. Each identification code must provide at least 6 decimal digits of unique code capacity. Calling and identification shall take no more than 500 milliseconds at either base or mobile from the time the transmitter has reached 90 percent power output, and the time needed to reach this output should not exceed 50 milliseconds. Likewise, receiver squelch circuits should be fully opened within 10 milliseconds from detection of carrier above threshold.

(iii) A means whereby it will be impossible for the operator of a mobile unit to key his transmitter in such a way as to cause harmful interference or to obstruct the communications of other stations or to transmit when beyond range of its base station. Each mobile unit shall be so configured as to provide automatic station identification when initiating a request for service; that such request can only be transmitted on an idle channel, and further that it shall be impossible to activate the mobile transmitter unless the mobile unit has received an enabling signal from a base -station in response to its request for service.

(iv) A means whereby the total number of mobile units, as determined in subsection 10, operating within a metropolitan area on a 12-channel group of frequency pairs, as listed in 21.501(k), does not exceed the total authorized number of mobile units.

(9) Notwithstanding other provisions of this part, applications for any of the frequencies listed in paragraph 21.501(k) hereof will be processed under the following procedure.

(i) All applicants who file within 60 days after the public notice date of the first application that requests assignment of a particular 12-channel group of frequency pairs substantially in the same metropolitan area for which the first application is submitted are jointly responsible for compliance with § 21.501(l)(8).

(ii) Any applicant who files more than 60 days after the public notice date of the first application that requests assignment of the particular 12-channel group of frequency pairs substantially in the same metropolitan area for which the first application is submitted, pursuant to § 21.501(l)(8), must conform its application to be compatible with whatever technical arrangements are implemented pursuant to § 21.501(l)(8) by applicants that file within the 60-day period.

(10) The total number of mobile units for all carriers operating within a metropolitan area on a 12-channel group of frequency pairs, as listed in 21.501(k), will be authorized as follows:

(i) A total of 40 mobile units per channel will initially be authorized. The Commission will authorize additional mobile units if the applicant can demonstrate, as indicated in subsection (b) below, that the average busy-hour channel usage is below 85 percent.

(ii) The licensees in each market shall measure channel usage at least once every 3 months. These measurements shall be reported to the Commission within 30 days. Measurements shall be taken during the busiest 12-hour periods on 3 days (within a 7-day period) having normal usage. This information should be reported separately for each of the 3 days selected, should be reported by dates, and should disclose the following:

(A) The number of mobile units in service during each of the days specified;

(B) The number of calls completed each hour;

(C) The total number of minutes that the channels (base and mobile) were utilized for transmissions between the base station and land mobile units during each hour;

(D) The average channel usage for the busiest hour as defined in subsection (iii) above for the 3 days being measured; and

(E) Such other additional information which may more accurately reflect channel usage.

(iii) If the average busy-hour channel usage of the 12-channel group of frequency pairs is in excess of 85 percent, the Commission may order a reduction in the authorized number of mobile units, provided that a minimum of 40 mobile units per channel are in service for a 12-channel pair system. This reduction shall be implemented by the carriers through normal attrition of system users.

(iv) The carriers utilizing any 12-channel group of frequency pairs in a given metropolitan area may petition the Commission to alter the 85-percent average busy-hour channel usage figure. The Commission shall authorize such a change if good cause is shown.

[FR Doc. 78-29584 Filed 10-24-78; 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 Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132, 1138]

[Docket Nos. AO-231-A47, etc.]

HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENTS AND ORDERS

7 CFR Parts	Marketing area	Docket Nos.
1126	Texas	AO-231-A47
1073	Wichita, Kansas	AO-173-A36
1097	Memphis, Tennessee	AO-219-A35
1102	Fort Smith, Arkansas	AO-237-A29
1104	Red River Valley	AO-298-A29
1106	Oklahoma Metropolitan	AO-210-A42
1108	Central Arkansas	AO-243-A33
1120	Lubbock-Plainview, Texas	AO-328-A22
1132	Texas Panhandle	AO-262-A31
1138	Rio Grande Valley	AO-335-A27

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider a cooperative association's proposal to amend 10 southwestern federal milk orders. The proposal would increase the funding rate for the advertising and promotion program of each order and would tie the rate to the level of producers' pay prices in the 10 markets. The rate under each order is now at a fixed level. The cooperative association contends that the requested change for each order is needed to keep the funding rate current with the inflationary trend in the economy.

DATE: November 8, 1978, beginning at 9:30 a.m., local time.

ADDRESS: Dunfey's Royal Coach Inns, 3800 W. Northwest Highway, Dallas, Tex. 75220.

FOR FURTHER INFORMATION CONTACT:

Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4824.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held November 8, 1978, at Dunfey's Royal Coach Inns, 3800 W. Northwest Highway, Dallas, Tex. 75220, beginning at 9:30 a.m., local time, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Texas and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*,), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY ASSOCIATED MILK PRODUCERS, INC.

Proposal No. 1

Amend the provisions relative to the advertising and promotion programs in each of the aforementioned orders as follows:

A. Deduct for advertising and promotion, eight-tenths of one percent, rounded to the nearest one-half cent per hundredweight, of the simple average of the minimum uniform or "blend" prices per hundredweight as announced by the respective market administrators for Orders No. 126, 73, 97, 102, 104, 106, 108, 120, 132 and 138 during the preceding calendar year period. Said rate of deduction shall be applicable to the volume of milk marketed by each producer during the following period of July through June of each year.

B. Delete paragraph (d) of §.116 "Duties of the Agency" of each respective Order and substitute the following therefor:

(d) Prepare and submit to the Secretary for approval prior to each semi-annual period of each calendar year a budget showing the projected amounts to be collected during the semi-annual period of each calendar year and how such funds are to be dispersed by the Agency.

C. Delete paragraphs (b) and (c) of §.120 "Procedure for requesting refunds" of each respective Order and substitute the following therefor:

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the month of April for milk to be marketed during the following July through December period and within October for milk marketed during the following January through June period.

(c) A dairy farmer who first acquires producer status under this part after the month of April or October as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar semi-annual period involved.

D. Delete sub-paragraphs (b)(2) and (b)(3) of §.121 "Duties of the market

administrator" and substitute the following therefor:

(b)(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer for which deductions were made pursuant to proposal No. 1.

(b)(3) After the end of each two-month period, make a refund to each producer who has made application for such refund pursuant to § .120. Such refund shall be computed at the rate of such producer's milk pooled for which deductions were made pursuant to proposal No. 1 herein for such two-month period, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

E. Renumber paragraphs (c) and (d) of § .121 "Duties of the market administrator" of each respective Order as paragraph (d) and (e), respectively and add a new paragraph (c) as follows:

(c) On or before March 15th of each year, the market administrator shall announce to all producers and thereafter with respect to new producers, the rate of deduction to be effective during the following period of July through June.

F. Except for the Texas order (No. 1126), amend § .112 "Term of office" to provide that the "Term of office" of each member of each respective agency shall be extended through June 30, 1980 and that members shall serve annually thereafter, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid marketing areas or from the Hearing Clerk, Room 1077-S, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units.

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only).
Office of the Market Administrator of each of the aforesaid marketing areas.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on October 20, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-30084 Filed 10-24-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 61]

MANAGEMENT AND DISPOSAL OF LOW-LEVEL WASTES BY SHALLOW LAND BURIAL AND ALTERNATIVE DISPOSAL METHODS

Advance Notice of Proposed Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission has underway development of a specific regulatory program for management of low-level radioactive wastes. It is anticipated that the regulations will initially cover only the currently practiced method of shallow land burial. Alternative disposal methods would be added as acceptable criteria are developed. The purpose of this notice is to invite advice, recommendations, and comments on the scope of the environmental impact statement (EIS) for proposed new 10 CFR Part 61 and on the alternative waste disposal methods that may eventually be incorporated into the new regulation.

DATE: Comment period expires December 26, 1978.

ADDRESSES: Interested persons are invited to submit written comments and suggestions to the Secretary of the Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Dr. Michael J. Bell, Chief, Low-level Waste Branch, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-427-4240.

SUPPLEMENTARY INFORMATION: On December 7, 1977, the Nuclear U.S. Regulatory Commission published a notice "Comments on Task Force Report (NUREG-0217) and Statement on Implementation of Regulatory Program for Low-level Waste Management." The program was published as NUREG-0240.

Recent developments at the six commercially operated shallow land burial sites have highlighted the need for an explicit regulatory program for shallow land disposal of low-level wastes and for disposal of such wastes by alternative disposal methods. Two of the six licensed commercial burial grounds (West Valley, N.Y. and Maxey Flats, Ky.) are closed. A third site (Sheffield, Ill.) is filled to its licensed capacity. A contested application for expansion of Sheffield is currently under review. The State of South Carolina has placed a limit on the volume of waste that may be buried each month at a fourth site (Barnwell, S. C.). The Commission believes that development of those parts of its program dealing with regulation of alternative methods of disposal of low-level wastes should be accelerated, since such alternatives offer means of providing additional disposal capacity. The staff had informal inquiries concerning requirements for licensing of such facilities, and expects that an application for such a facility may be forthcoming.

The low-level waste program provides for development of proposed regulations for disposal of low-level wastes by shallow land burial by 1980, and development of proposed regulations for disposal of low-level wastes by at least one alternative disposal method by 1981. NRC currently licenses operation of commercial shallow land burial under the provisions of parts 20, 30, 40, 51, and 70 following the procedures in 10 CFR Part 2. Part 20 requires that land burial sites be on Federal or State owned land and outlines factors to be addressed when evaluating proposed disposal procedures. Parts 30, 40, and 70 contain general rules governing licensing of by-product, source, and special nuclear material respectively. These regulations require the submission of an environment report as part of an application for commercial waste disposal by shallow land burial. Through 10 CFR Part 51, NRC implements the requirements of the National Environmental Policy Act of 1969 in its licensing process. Licensing decisions are based on a case-by-case evaluation.

The procedures in part 2 include requirements to furnish involved State and local government copies of the application, FEDERAL REGISTER notification of receipt of an application, participation, and involvement of State and other interested and effected par-

ties in the licensing process and the opportunity for an impartial hearing to review all pertinent issues through the licensing process. As stated in this notice, NRC recognizes the need for and plans to develop more explicit criteria and regulations for LLW management.

To provide guidance to the staff on alternative disposal methods to be considered, the U.S. Nuclear Regulatory Commission has contracted with Ford, Bacon & Davis Utah, Inc. to perform a study of potential disposal methods. The purpose of the study is to identify viable disposal methods and to submit to further detailed study alternative methods determined on the basis of a preliminary screening effort. Based on the contractor's findings and a review by a Technical Advisory Panel, the U.S. Nuclear Regulatory Commission has identified as the candidates for detailed study the following alternatives: Emplacement of wastes in engineered structures, disposal of wastes in ocean waters, emplacement of wastes in mined cavities (existing mines or mines dug specifically for waste disposal), and burial of wastes at an intermediate level (e.g., 30 feet of cover as compared to 4-6 feet of cover for shallow land burial). The contractor has recommended that modifications to current shallow land burial practices should also be considered. The contractor is submitting these alternatives to further study. The study is expected to be completed by November 1978, and the U.S. Nuclear Regulatory Commission plans to publish the results as soon as possible following completion of the study. Preliminary results of the study to date will be published shortly as NUREG/CR-0308. Copies of the report may be examined at the Commission's Public Document Room at 1717 H Street N W., Washington, D.C., and at the Commission's local public document rooms. Single copies of the report may be obtained without charge, to the extent of supply, by writing to the Division of Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C, 20555. After existing stock is exhausted, copies are available from the National Technical Information Service, Springfield, Va. 22161, at current rates.

Advice, recommendations, and comments on the development of this regulation are invited from all interested persons. Specific comments are requested on the following questions:

1. Proposed New 10 CFR Part 61. The Commission has concluded that an environmental impact statement should be prepared pursuant to the National Environmental Policy Act on its actions to develop more explicit criteria and regulations for low-level waste management. The Commission plans initially to consider the environmental impact of low-level waste disposal alternatives and of technical criteria for disposal of radioactive wastes by shallow land burial. An environmental impact statement will be prepared to provide an essential part of the information and decision base for the criteria and rulemaking action. What significant issues should the Commission consider and analyze in depth in the environmental impact statement? What issues are not significant, or are covered or may be covered in another environmental review, and therefore may be eliminated from analysis in this enviromental impact statement? Within this statement, what should the criteria be to distinguish among viable and nonviable alternatives? Do we know enough about certain disposal options to make an informed decision at this time? Should waste segregation be applied to low-level wastes (e.g., separate disposal sites for nonfuel cycle wastes)?

2. Is it desirable to develop explicit criteria and standards for the disposal of low-level wastes? If so, what should be the general format and content of the criteria and standards?

3. What should be considered in developing the criteria for waste performance; site suitability, design, and operations; site monitoring; site decommissioning, postoperational maintenance, and funding? Are there other areas where criteria are needed?

4. What are the advantages and disadvantages of the four alternatives described above? Which of the alternatives should be given the greatest priority in development of regulations?

5. Are there viable alternatives, other than the four alternate methods identified above, which should be further considered in the development of the U.S. Nuclear Regulatory Commission's program? (Those which have been considered were noted earlier in this notice and are discussed in greater detail in NUREG/CR-0308.) If so, what is the basis (technical, economic, social, etc.) for considering an additional alternative as a potential candidate?

6. What should be the extent of each State's responsibility for management of the low-level wastes generated by operations within its borders?

The Commission would appreciate any other comments on the development of its program.

Dated at Washington, D.C., this 18th day of October 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc 78-29911 Filed 10-24-78; 8:45 am]

[3510-17-M]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 7B]

OPTIONAL LABORATORY ACCREDITATION

Proposed Procedures Designed for Federal Agency Needs

AGENCY: Assistant Secretary of Commerce for Science and Technology.

ACTION: Proposed optional procedures for a national voluntary laboratory accreditation program serving Federal programs.

SUMMARY: Federal agency programs normally require assurance that the products covered by such programs meet certain standards issued by Federal agencies under directives given to them by the Congress. Many of these agencies employ or plan to employ laboratory accreditation procedures whereby testing laboratories are evaluated and approved to conduct the product tests required by the standards. Such accreditation procedures are or will be similar in purpose to those of the National Voluntary Laboratory Accreditation Program (NVLAP) operated by the Department of Commerce (Title 15 CFR Part 7).

The Secretary of Commerce is striving for effective coordination of the NVLAP procedures with similar programs of other government agencies so as to minimize the burden on the laboratories being evaluated while maximizing benefits derived from accreditation activities. It is the Secretary's intent to avoid duplication of other government laboratory examination or accreditation activities and to foster and promote uniformily acceptable standards of competence in testing laboratories. These optional NVLAP procedures are proposed for use in programs of other Federal agencies when those agencies have determined that a need for an accreditation program exists.

DATES: Interested parties are requested to submit their comments not later than December 26, 1978. If an informal hearing is desired, a request therefore must be made in writing before November 14, 1978.

ADDRESS: Send comments or requests for a hearing to the Assistant Secretary for Science and Technology, Room 3864, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-3221.

SUPPLEMENTARY INFORMATION: Federal agency programs which may be covered by these procedures are:

1. Regulatory programs, usually related to public health and safety, where mandatory standards and test methods are established by rule based on specific authorities and responsibilities assigned to a Federal agency by statute; and

2. Public service programs where standards and test methods are of a voluntary nature and for which a Federal agency has been given specific statutory authority and responsibility.

The optional procedures proposed herein for Federal agency program needs will be designated as Part 7B of title 15 CFR Part 7. Part 7A will be the new designation for the existing procedures for a National Voluntary Laboratory Accreditation Program (NVLAP), formerly designated as Part 7 title 15, and is being retained in its entirety.

The optional Part 7B procedures eliminate the requirement to make a finding of need described in §§ 7A.4 and 7A.5 of the NVLAP procedures, the head of the Federal agency involved, rather than the Secretary of Commerce, has the responsibility for determining whether a need exists to accredit testing laboratories that serve a specific product of interest to that agency. It is believed that this is appropriate since such a finding is the responsibility of the Federal agency with the regulatory or service program authority over that product in a specific application.

These optional Part 7B procedures also make possible the elimination of the requirement that the Secretary of Commerce establish a criteria committee to develop and recommend general and specific criteria for accrediting testing laboratories. Under the proposed optional Part 7B procedures, the head of the concerned Federal agency may elect to (a) submit recommended general and specific criteria directly to the Secretary of Commerce for consideration, or (b) request the Secretary of Commerce to establish a Governmental Laboratory Accreditation Criteria Committee composed of government employees to recommend such criteria, or (c) use the relevant provisions of NVLAP (§ 7A.6) by requesting the Secretary of Commerce to establish a National Laboratory Accreditation Criteria Committee (NLACC) to develop and recommend such criteria. All criteria recommended are expected to be compatible with criteria established in existing NVLAP Part 7A programs or are to explain in detail the reasons for deviating from those criteria.

As in the NVLAP procedures, the Secretary of Commerce, will be responsible for the proposed general and specific criteria which would be published in the FEDERAL REGISTER for public comment. Comments received in response to such FEDERAL REGISTER notice will be analyzed by the Secretary of Commerce in cooperation with the Federal agency having authority over the program. The National Bureau of Standards (NBS) will contract for or will itself conduct the examination of testing laboratories seeking accreditation in accordance with examination requirements established by the Secretary of Commerce. Fees and charges established by the Secretary of Commerce for examining, accrediting and auditing test laboratories on behalf of other Federal agencies shall be in amounts calculated to maximize the self-sufficiency of this program and will be published in the FEDERAL REGISTER as prescribed under the NVLAP procedures.

On February 25, 1976, the Secretary of Commerce published in the FEDERAL REGISTER (41 FR 8163-8168) the procedures for the operation of the National Voluntary Laboratory Accreditation Program. The goal of this program is to provide, in cooperation with the private sector, a national voluntary system to examine upon request the professional and technical competence of private and public testing laboratories that serve regulatory and nonregulatory product evaluation and certification needs. The referenced procedures require that the Secretary make a preliminary finding of need for each laboratory accreditation program, obtain public comment on the preliminary finding and, where appropriate, make a final finding of need. Once the final finding of need has been established, general and specific criteria for accrediting laboratories are developed and recommended to the Secretary by a National Laboratory Accreditation Criteria Committee established for that purpose. The Secretary, after consideration of such recommendations, prepares proposed accreditation criteria to be employed and publishes them in the FEDERAL REGISTER for public comment. After evaluation of such comment, the Secretary will determine the final accreditation criteria and will publish them in the FEDERAL REGISTER along with a separate statement of fees to be charged applicants for accreditation. Following this, the Secretary will begin to evaluate and accredit testing laboratories which apply and which meet the requirements of those criteria.

Upon reviewing the NVLAP procedures as now published, the Secretary finds that certain parts are not directly applicable to regulatory programs or to public service programs where responsibility for such programs rests with other Federal agencies. Specifically, the Secretary finds that the need for establishing a laboratory accreditation program in these areas is the responsibility of those agencies which statutorily have been assigned authority for developing and conducting such programs. Further, the Secretary finds that certain other aspects of the NVLAP procedures dealing with the establishment of general and specific criteria for accrediting testing laboratories should be changed to allow optional procedures to be invoked at the election of other interested Federal agencies.

Moreover, the Secretary is satisfied that, based on public comments received at the time the proposed NVLAP procedures were published, there is a need to provide a laboratory accreditation system which will avoid duplication of other testing laboratory examination or accreditation programs while at the same time providing a thorough and consistent approach to laboratory accreditation.

It is with these factors in mind that the Secretary proposes this Part 7B to Title 15 CFR to provide a laboratory accreditation program servicing the needs of other Federal agencies for the following two specific types of programs:

1. Federal regulatory programs, usually related to public health and safety, where mandatory standards and test methods are established by rule based on specific authorities and responsibilities assigned to a Federal agency by statute. Programs such as energy conservation, environmental protection, and occupational and product safety, fall into this category.

2. Federal public service programs where standards and test methods are of a voluntary nature and for which a Federal agency has been given specific statutory authority and responsibility. An example of one such public service program is the program which guarantees mortgages for qualified individuals who desire to buy homes that meet minimum property standards. Another example would be programs to provide for a national measurement system capable of assuring accurate measuring instruments, devices, and standards for use in commerce, engineering, and science.

Regulatory Analysis. President Carter's Executive Order 12044, "Improving Government Regulations," directs that a regulatory analysis be prepared for each significant regulation determined to have potential major economic consequences for the general economy, for individual industries, geographic regions, levels of government, or specific elements of the population. These proposed regulations would not, in and of themselves, have such major economic consequences. It is only in the implementation of these regulations by the development of a laboratory accreditation program for a

given product that such economic consequences could be determined. In the Part 7A procedures, such determination is included as part of the final finding of need made by the Secretary as published in the FEDERAL REGISTER. However, for these Part 7B procedures, the determination of potential major economic consequences would be the responsibility of the requesting agency. For a regulatory program such a determination would be a part of the FEDERAL REGISTER notice announcing the program. For other agency programs, the Secretary shall request that a statement of such determination accompany the request to implement an accreditation program under Part 7B procedures.

Request for Comments. Interested persons desiring to comment on the proposed Part 7B operational procedures set out below are invited to submit such comments, in four copies, on or before December 26, 1978. To the Assistant Secretary for Science and Technology, U.S. Department of Commerce, Room 3864, Main Commerce Building, Washington, D.C. 20230.

Any person desiring to express his or her views in an informal hearing relative to such procedures shall notify the Assistant Secretary for Science and Technology in writing on or before November 14, 1978, at the address shown in the preceding paragraph. Upon receipt of such request, informal public hearings will be held so as to give all interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to the opportunity to make written submissions. If deemed appropriate, such hearings may be held at two locations, one of which shall be east of the Mississippi River and the other west thereof. Notice of such hearings will be published in the FEDERAL REGISTER at least twenty (20) days in advance thereof. A transcript will be made of any oral presentation.

All written and oral comments and testimony that are furnished in response to the invitation made by this notice will also be made part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility (CRRIF), Room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. 20230.

Based on these concepts and principles, the Secretary proposes the actions and additional procedures under Part 7 CFR Title 15 as set forth below.

Dated: October 19, 1978.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

Part 7 CFR Title 15 titled "Procedures for a National Voluntary Laboratory Accreditation Program" as published in the FEDERAL REGISTER, Volume 41, Number 38, Wednesday, February 25, 1976 (pages 8163-8168) is retained and redesignated Part 7A CFR Title 15. Each section thereunder shall be denominated as 7A followed by the appropriate section number.

Part 7B is added to Title 15 CFR to read as follows:

Sec.

7B.1 Purpose.
7B.2 Description and goal of program.
7B.3 Definitions.
7B.4 Determination of need to accredit testing laboratories.
7B.5 Establishment of criteria with which to accredit laboratories.
7B.6 Establishment and functions of a Governmental Laboratory Accreditation Criteria Committee.
7B.7 Development and recommendation of criteria for accrediting testing laboratories.
7B.8 Publication of proposed criteria.
7B.9 Coordination with Federal agencies.
7B.10 Establishment of fees and charges.
7B.11 Participation of testing laboratories.
7B.12 Reference to accredited status.
7B.13 Revocation or termination of accreditation of a testing laboratory.
7B.14 Cessation of accreditations.
7B.15 Refund of fees and charges.
7B.16 Amendment or revision of criteria.
7B.17 User information and reports.
7B.18 Support function.

AUTHORITY: Sec. 2, 31 Stat. 1449, as amended; sec. 1, 64 Stat. 371 (15 U.S.C. 272); Reorganization Plan No. 3 of 1946, Part VI.

§ 7B.1 Purpose.

The purpose of this part is to establish procedures under which a National Voluntary Laboratory Accreditation Program (NVLAP) serving Federal agencies which have specific regulatory or public service programs will function.

§ 7B.2 Description and goal of program.

(a) This program extends the provisions of the National Voluntary Laboratory Accreditation Program (NVLAP) (Title 15 CFR Part 7A) to examine the professional and technical competence of testing laboratories that serve government regulatory and public interest needs. Testing laboratories that meet the qualifications established pursuant to the procedures set out below would be accredited. This program will also require those testing laboratories that are accredited to maintain their qualification status through periodic checks and examinations. In conjunction with the NVLAP Part 7A program, this program will seek, through coordination and consultation, to maximize benefits derived from other testing laboratory examination and accreditation activities. In this way, it is intended that the program will avoid duplication of other testing laboratory examination or accreditation programs conducted by the public and private sectors.

(b) The intended goal of this program is to serve, on a timely basis, the needs of Federal agencies by accrediting this Nation's testing laboratories. Achievement of this goal would be attained by fostering and promoting a uniformly acceptable base of clearly defined criteria for professional and technical competence in testing laboratories and by establishing a background of experience necessary to the orderly evolution of a laboratory accreditation system designed to serve national needs as they develop.

§ 7B.3 Definitions.

(a) The term "Secretary" means the Secretary of Commerce or the Secretary's designee.

(b) The term "Product" includes the plural thereof and means a type or a category of manufactured goods, constructions, installations and natural and processed materials or those associated services whose characterization, classification or functional performance determination is specified by standards.

(c) The term "Criteria Committee" means a National Laboratory Accreditation Criteria Committee or a Governmental Laboratory Accreditation Criteria Committee appointed by the Secretary under these procedures (i.e., part 7A or B).

(d) The term "person" means associations, companies, corporations, educational institutions, firms, government agencies at the Federal, State, and local level, partnerships, and societies, as well as divisions thereof, and individuals.

(e) The term "testing laboratory" means any "person" as defined above whose functions include testing, analyzing or inspecting "products," as defined above, and/or evaluating the designs or specifications of such "products" according to the requirements of applicable standards.

(f) The term "general criteria" means those characteristics of a testing laboratory commonly found in, and generally expected of, such a laboratory serving the product under consideration. See in this connection § 7B.5(a).

(g) The term "specific criteria" means those detailed requirements deemed essential to assuring an acceptable examination and evaluation of the testing function performed by a testing laboratory in performing specific tests related to identified standards for the product under consideration. See in this connection § 7B.5(a).

§ 7B.4 Request to accredit testing laboratories.

(a) Any Federal agency responsible for regulatory or public service programs established pursuant to statute which has determined there is a need to accredit testing laboratories and indicates that it would use such accredited laboratories may request the Secretary to establish a NVLAP based on these Part 7B procedures.

(b) Such a request shall be in writing and will include the following:

(1) Identification of the product;

(2) Text of applicable rules or product standards;

(3) Text of test methods, if not included in the applicable rule or standard identified in paragraph (b)(2) of this section;

(4) Recommended general and specific criteria compatible with similar criteria established under NVLAP Part 7A procedures to be used in accreditation of test laboratories or a request for the establishment of either a Governmental Laboratory Accreditation Criteria Committee or a National Laboratory Accreditation Criteria Committee to develop and recommend such criteria to the Secretary;

(5) A statement of the need identified under paragraph (a) of this section for accrediting testing laboratories that serve the product identified in paragraph (b)(1) of this section, and citation of the specific authority relied upon in making such determination of need; and

(6) A statement of willingness to support any necessary developmental aspects of the program with funding and personnel.

(c) If, on the basis of the information provided or because of the lack of funding and personnel from the requesting agency, the Secretary is unable to justify the establishment of a NVLAP under these Part 7B procedures, the Secretary will decline to act further on the request. The Secretary shall in that event notify the requesting agency in writing within ten (10) working days after making a decision and shall state the reasons for so declining.

§ 7B.5 Establishment of criteria with which to accredit laboratories.

(a) Laboratories will be accredited on the basis of their conformance to general and specific accreditation criteria issued by the Secretary under these procedures. The general criteria will deal with those qualities which make for an effective testing laboratory. The specific criteria will be based on the requirements of the relevant rules, standards, and test methods involved.

(b) Laboratory accreditation criteria may be recommended to the Secretary by the requesting Federal agency, may be developed by a Governmental Laboratory Accreditation Criteria Committee composed of government employees, or may be developed by a National Laboratory Accreditation Criteria Committee described in the NVLAP procedures (newly redesignated § 7A.6). The choice of which approach to use will lie with the Federal agency requesting the program.

(c) The Secretary will decide, after consultation with the requesting Federal agency, on the precise language of the proposed general and specific criteria to be published by the Secretary in the FEDERAL REGISTER. In making the decision, the Secretary will consider:

(1) The needs and scope of the program of the requesting agency;

(2) Compatibility with other criteria already established and being used in other NVLAP's; and

(3) The nature and content of other related laboratory accreditation programs.

§ 7B.6 Establishment and functions of a Governmental Laboratory Accreditation Criteria Committee.

(a) In those instances where a Federal agency declines to recommend laboratory accreditation criteria, the Secretary, pursuant to the request of such agency, will establish a Governmental Laboratory Accreditation Criteria Committee or a National Laboratory Accreditation Criteria Committee in order to develop and recommend general and specific criteria for accrediting laboratories serving the product specified.

(1) Membership in each such Governmental Laboratory Accreditation Criteria Committee thus established will be composed of employees of the Department of Commerce, the requesting Federal agency, and other Government agencies having an employee of the Department of Commerce or of the requesting Federal agency to serve as chairperson of each Committee.

(2) Membership in each National Laboratory Accreditation Criteria Committee thus established shall consist of a combination of Federal, State, and local government personnel and qualified representatives chosen from among producers, users, consumers, testing laboratories, academia, and general interest groups, in accordance with the relevant provisions of the NVLAP procedures (redesignated section 7A.6 of Part 7 CFR Title 15).

§ 7B.7 Development and recommendation of criteria for accrediting testing laboratories.

(a) The Secretary, and either the requesting Federal agency in those cases where it has elected to recommend general and specific criteria to the Secretary or the Criteria Committee, acting at the request of the Secretary in developing general and specific criteria to accredit testing laboratories that serve a specific product, shall consider factors such as:

(1) For general criteria pertaining to testing laboratories:

(i) Organization;

(ii) Staff;

(iii) Physical plant;

(iv) Operational processes;

(v) Control procedures;

(vi) Quality assurance; and

(vii) Professional and ethical business practices, as appropriate.

(2) For specific criteria pertaining to testing laboratories:

(i) Personnel and equipment qualifications required of the testing laboratory function;

(ii) Requirements applicable to proficiency sample programs;

(iii) Application requirements;

(iv) Initial and periodic examination and audit procedures; and

(v) Professional and technical qualifications of personnel who examine testing laboratories.

(b) The general and specific criteria developed under this section for accrediting testing laboratories will be based upon criteria found in existing rules or standards where such existing criteria are deemed appropriate. Where appropriate existing criteria cannot be found, the requesting Federal agency, in those cases where it has elected to recommend general and specific criteria to the Secretary, or the Criteria Committee, will, at the request of the Secretary, undertake to develop and recommend such appropriate general and specific criteria as may be needed.

(c) The criteria shall contain instructions for making application for accreditation by testing laboratories serving the product involved and shall require that each testing laboratory that desires to participate in this program must agree to conditions that include but are not limited to the following:

(1) Be examined and audited initially and on a continuing basis;

(2) Pay accreditation fees and charges; and

(3) Avoid reference by itself and forbid others utilizing the services of an accredited testing laboratory from referencing its accredited status in consumer media and in product advertising or on product labels, containers and packaging or the contents therein or in any other way which might convey product certification.

(d) The criteria shall contain a statement that compliance by testing laboratories with the general and specific critria and other conditions established by the Secretary and which are accredited by the Secretary under

these procedures shall in no way relieve such laboratories from the necessity of also observing and being in compliance with any existing Federal, State and local statutes, ordinances, and regulations that may be applicable to the operation of such laboratories, including consumer protection and antitrust laws.

(e) In carrying out the activities authorized by this section:

(1) No action will be taken or criteria developed that would prohibit the accreditation of a testing laboratory solely on the basis of that laboratory's association or nonassociation with manufacturing, distributing or vending organizations, or because the testing laboratory is a foreign firm;

(2) No action will be taken under this program to develop an administrative rule, a product standard, or a test method standard;

(3) No action will be taken under this program to modify an administrative rule, a product standard, or a test method standard where such a standard is in existence; and

(4) The Secretary, under this program, will not ask for or accept confidential business data, trade secrets or other proprietary information.

§ 7B.8 Publication of proposed criteria.

(a) Upon its development of the general and specific criteria for accrediting testing laboratories under § 7B.7, the requesting Federal agency where it has elected to recommend general and specific criteria to the Secretary, or the Criteria Committee shall forward its recommendations for such criteria to the Secretary for consideration. The Secretary, after consideration of such recommendations (see § 7B.5(c)), will publish in the FEDERAL REGISTER a notice giving the complete text of the proposed general and specific criteria, and inviting any interested persons to submit written comments on such proposed criteria within sixty (60) days after such publication in the FEDERAL REGISTER, unless another time limit is provided by the Secretary.

(b) Interested persons wanting to express their views in an informal hearing shall notify the Secretary of that desire within twenty (20) days after such proposed criteria are published in the FEDERAL REGISTER. Upon receipt by the Secretary of such request, informal public hearings shall be held so as to give all interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to the opportunity to make written submissions. If deemed appropriate by the Secretary, such hearings will be held at two locations, one of which shall be east of the Mississippi River and the other west thereof. Notice of such hearings shall be published in the FEDERAL REGISTER at least twenty (20) days in advance thereof. A transcript will be kept of any oral presentation.

(1) All written and oral comments that are furnished in response to the invitation made by this notice will be filed in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce Building, 14th Street between E Street and Constitution Avenue NW., Washington, D.C. 20230, and will be available for public inspection and copying at that location.

(c) The Secretary upon receipt of all written and oral comments will ask the requesting Federal agency, in those cases where it has recommended general and specific criteria to the Secretary, or the Government or National Laboratory Accreditation Criteria Committee, to conduct and return to the Secretary in writing, within a time period specified by the Secretary, its evaluation and recommendations with respect to such comments. After considering such evaluation and recommendations, and after consultation with the requesting Federal agency, the Secretary will publish in the FEDERAL REGISTER a notice:

(1) Announcing the final general and specific criteria that testing laboratories must meet in order to be accredited and the date when such final criteria shall go into effect which shall not be less than sixty (60) days after the date of publication of such notice;

(2) Stating that the proposed general and specific criteria will be further developed before final publication; or

(3) Withdrawing the proposed general and specific criteria from further consideration.

§ 7B.9 Coordination with Federal agencies.

As a means of assuring effective and meaningful cooperation, input, and participation by those Federal agencies that have an interest in and may be impacted by the laboratory accreditation program carried out under these procedures, the Secretary shall undertake to communicate and consult with appropriate officials within those agencies. The coordination efforts will include opportunities for representatives designated by those agencies to serve on each Criteria Committee established by the Secretary in which those agencies have an interest.

§ 7B.10 Establishment of fees and charges.

(a) The Secretary in conjunction with the use of the Working Capital Fund of the National Bureau of Standards, as authorized by section 12 of the Act of March 3, 1901, as amended (15 U.S.C. 278b), or any similar financial arrangement for this program, shall establish fees and charges for examining, accrediting, and auditing testing laboratories. The fees and charges established by the Secretary, which may be revised when the Secretary deems it appropriate to do so, shall be in amounts calculated to enable the self-sufficiency of this program. A separate notice will be published in the FEDERAL REGISTER simultaneously with the notice of proposed general and specific criteria referred to in § 7B.8(a). Such notice will set out a schedule of estimated fees and charges the Secretary proposes to establish. The notice would be furnished for information and guidance purposes only in order that the public may evaluate the proposed criteria in light of the expected fees to be charged.

(b) At such time as the Secretary publishes the notice announcing the final general and specific criteria referred to in § 7B.8(c)(1), the Secretary shall also simultaneously publish a separate notice in the FEDERAL REGISTER setting forth the final schedule of fees that will be charged testing laboratories that serve a specific product. The effective date of such final schedule of fees shall be the same as the date on which the final general and specific criteria are to take effect.

(c) Revisions, if any, to the fees and charges established by the Secretary under paragraph (b) of this section shall be published in subsequent FEDERAL REGISTER notices and shall take effect not less than thirty (30) days after the date of publication of such notice. Mention of such revisions shall also be published in the appropriate quarterly reports referred to in § 7B.17(a).

§ 7B.11 Participation of testing laboratories.

(a) Each testing laboratory serving a product for which final general and specific criteria have been promulgated under § 7B.8(c)(1), and desiring to be accredited under this program, will notify the Secretary of its desire pursuant to the provisions of such criteria.

(b) After receipt and evaluation of the testing laboratory's application and information contained therein, the Secretary shall, upon the acceptance thereof, notify the applicant testing laboratory and the National Bureau of Standards in writing of the specific applicable examination requirements for accreditation and the fees and charges for such examination and accreditation. If the application is not accepted, the Secretary shall notify the applicant testing laboratory of the reasons for rejection of its application, and such testing laboratory may reapply under § 7B.13(d) after correcting the deficiencies set out in the Secretary's notification of rejec-

tion. Alternatively, the applicant testing laboratory shall have thirty (30) days to request a hearing pursuant to 5 U.S.C. 556. In the event, however, that the applicant testing laboratory requests a hearing within that thirty (30) day period the Secretary's rejection shall be stayed until the hearing held pursuant to 5 U.S.C. 556.

(c) A testing laboratory desiring to be accredited under this program to serve the product identified by the Secretary under § 7B.4(b) in accordance with the administrative rules, standards, and test methods identified must meet the general and specific criteria promulgated by the Secretary.

(d) Upon receipt by the National Bureau of Standards of the applicant testing laboratory's written response pertaining to the specific applicable examination requirements and of the fees and charges specified in paragraph (b) of this section, the National Bureau of Standards, on behalf of the Secretary, will arrange for by contract or will itself conduct the examination in accordance with the examination requirements of the Secretary. In all cases where testing laboratories are examined, the National Bureau of Standards will assure that the personnel used by the contractor or by the National Bureau of Standards possess the professional and technical qualifications set out in the specific criteria promulgated under § 7B.8(c)(1). If the National Bureau of Standards conducts the examination, the resultant examination report will be forwarded to the Secretary. In cases where the examination report is prepared by a contractor, the National Bureau of Standards, before making payment thereunder or forwarding the report to the Secretary, will review the report to assure that the contract terms have been fulfilled.

(e) The Secretary, after reviewing the examination report furnished under paragraph (d) of this section, will make a determination granting or proposing to deny accreditation to the applicant testing laboratory, not later than twenty (20) working days following the date on which the report is received. If the determination is not made within such time limit, the Secretary shall notify the applicant testing laboratory in writing of the reasons for the delay. Upon making such determination, the Secretary will notify the testing laboratory in writing of its accreditation status. If the Secretary proposes to deny accreditation to an applicant testing laboratory, the notification will state the reasons for such proposed denial.

(f) If an applicant testing laboratory is notified by the Secretary of a proposal to deny accreditation, the testing laboratory shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to the applicant in the event that the applicant does not appeal such notification by the end of that thirty (30) day period. In the event, however that the applicant testing laboratory requests a hearing within that thirty (30) day period, the Secretary's proposed denial shall be stayed until the hearing held pursuant to 5 U.S.C. 556.

§ 7B.12 Reference to accredited status.

Except as limited under § 7B.7(c)(3), a testing laboratory accredited under this program may use the following statement on its letterheads and in professional, technical and trade publications: "Accredited by the Department of Commerce, National Laboratory Accreditation Program for (appropriate wording as authorized by the Secretary's notification under § 7B.11(e))."

§ 7B.13 Revocation or termination of accreditation of a testing laboratory.

(a) If the Secretary finds that a testing laboratory which has previously been accredited violated the terms of its accreditation or the provisions of these Part 7B procedures, after consultation with such testing laboratory, the Secretary shall nofity that testing laboratory of the revocation of its accreditation.

(b) Upon receipt of a notice from the secretary of the proposed revocation, which notice shall set forth the reasons for such proposed revocation, the accredited testing laboratory shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed revocation shall become final through the issuance of a written decision to the testing laboratory in the event that such testing laboratory does not appeal the proposed revocation within that thirty (30) day period. In the event, however, that the accredited testing laboratory requests a hearing within that thirty (30) day period, the Secretary's proposed revocation shall be stayed at least until the hearing is held pursuant to 5 U.S.C. 556.

(c) A testing laboratory may at any time terminate its participation and responsibilities under this NVLAP Part 7B program or withdraw its application for accreditation by giving written notice to the Secretary. Upon receipt by the Secretary of such notice, the Secretary shall terminate further processing of the testing laboratory's application for accreditation. If such testing laboratory has been accredited, the Secretary shall terminate that testng laboratory's accreditation. The Secretary shall notify the testing laboratory that its accreditation has been terminated pursuant to its request.

(d) A testing laboratory whose application has been rejected or whose accreditation has been denied, revoked or terminated or which has withdrawn its application prior to being accredited may reapply for and be accredited if it meets the applicable general and specific criteria promulgated by the Secretary under § 7B.8(c)(1) and agrees also to meet the conditions set out under § 7B.7(c) and the provisions of § 7B.12.

§ 7B.14 Cessation of accreditations.

(a) The Secretary shall cease the accreditation of testing laboratories that serve a specific product if requested to do so by the Federal agency which requested the program if such agency makes a determination that the program is no longer needed. Such request, however, may not be made if the program has been in existence for less than 1 year after publication of the final accreditation criteria. The determination that the program is no longer needed shall be submitted to the Secretary in writing and shall set forth the requesting agency's reasons for causing the Secretary to cease accreditation through this NVLAP. Termination of the program will occur 60 days after the Secretary has published in the FEDERAL REGISTER a notice of such determination.

(b) If the Secretary ceases the accreditation of testing laboratories that serve a specific product as provided in this section, accreditation issued to all those testing laboratories serving the same specific product before termination of the program has occurred shall continue for the remainder of the period for which accreditation has been granted.

§ 7B.15 Refund of fees and charges.

(a) If a testing laboratory withdraws its application for accreditation after it has submitted the required examination fees and provides written notice to the Secretary of such withdrawal prior to the issuance of an accreditation of the denial thereof, the testing laboratory will be refunded such fees except for the application fee, if any, and for any other costs that have been incurred relative to its application.

(b) If a testing laboratory terminates its participation and responsibilities under this Part 7B program at any time after it has been accredited or after it has been notified by the Secretary that it is not being accredited, no part of the fees and charges paid by the testing laboratory will be refunded.

(c) If the accreditation of a testing laboratory is revoked by the Secretary under § 7B.13, no part of the fees and

charges paid by the testing laboratory will be refunded.

(d) If the Secretary ceases the accreditation of testing laboratories that serve a specific product under § 7B.14 and withdraws the accreditation of a testing laboratory to test a specific product under that section, no part of the fees and charges paid by the testing laboratory will be refunded as the testing laboratory will have been allowed to continue its accredited status for the period for which it had paid fees.

§ 7B.16 Amendment or revision of criteria.

The Secretary, the requesting government agency in those cases where it recommended general and specific criteria to the Secretary, or a Criteria Committee acting at the request of the Secretary, may undertake the development of amendments or revisions of any applicable general or specific criteria previously promulgated by the Secretary by following the same procedures pertaining to the original development of such criteria.

§ 7B.17 User information and reports.

(a) For each specific product for which a NVLAP Part 7B accreditation exists, the Secretary will publish a quarterly report noting all actions regarding such matters as accreditations, revocations, the establishment of fees and charges, the promulgation of general and specific criteria and any amendments or revisions to such criteria. Such publications shall clearly state that testing laboratories accredited by the Secretary under these procedures are in no manner immune from the necessity of being in compliance with all legal obligations and responsibilities imposed by existing Federal, State, and local laws, ordinances, and regulations, including those related to consumer protection and antitrust prohibitions.

(b) The Secretary will also prepare an annual report summarizing all activities carried out under these procedures which shall include a listing of all testing laboratories accredited by the Secretary during the year to which the annual report relates.

(c) As a means of giving prompt notice to the public of accreditation action taken, the Secretary shall, in addition to the reports called for under this section, publish in the FEDERAL REGISTER all actions taken during the preceding month which grant, revoke, terminate or result in the withdrawal of the accreditation of a testing laboratory. Such notice shall include the name and address of the testing laboratory concerned, and a brief explanation of the action taken by the Secretary with respect to that laboratory.

§ 7B.18 Support function.

The Secretary is authorized to make provisions for administrative and technical support and staff services as may be needed to carry out this program. The Secretary is also authorized to negotiate for and use funds of the requesting Federal agency as such funds are authorized for use by the requesting agency.

[FR Doc. 78-30203 Filed 10-24-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 752 3050]

KELCOR CORP., ET AL.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Dallas, Tex. finance company to cease, in connection with the extension of consumer credit, failing to compute finance charges and provide relevant disclosures in the manner and form required by Federal Reserve System regulations.

DATE: Comments must be received on or before December 22, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FUTHER INFORMATION CONTACT:

Juereta P. Smith, Regional Director, Dallas Regional Office, Federal Trade Commission, 2001 Bryan Street, Suite 2665, Dallas, Tex. 75201. 214-749-3056.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[6750-01-M]

[File No. 752 3050]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Kelcor Corp., a corporation, and C. K. Wingo, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Kelcor Corp., a corporation, and C. K. Wingo, individually and as an officer of said corporation, and it now appearing that Kelcor Corp. a corporation, and C. K. Wingo, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Kelcor Corp., a corporation, by its duly authorized officer and C. K. Wingo, individually and as an officer of said corporation, their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Kelcor Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 907< Hedrick Building, San Antonio, Tex.

Proposed respondent Kelcor Corp. does not engage in any consumer loan transactions itself, but operates through wholly-owned subsidiary offices located in the States of Texas, Louisiana and Oklahoma. Each subsidiary is incorporated in the respective State in which it is located under such names as Family Plan Corp., Credit Plan Corp., Credit Plan Corp. of Houston, Credit Plan Corp. of Corpus Christi, Credit Plan Corp. of Fort Worth, Mutual Plan Corp., Mutual Plan of Tulsa, Inc., or Mutual Plan Corp. of Shreveport.

Proposed respondent C. K. Wingo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of Kelcor Corp. and its subsidiaries. His address is the same as that of the corporate respondent.

Proposed respondents, Kelcor Corp. and C. K. Wingo formulate, direct and control the policies, acts and practices of each of the wholly-owned subsidiaries.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

It is ordered, That respondents Kelcor Corp., a corporation, its successors and assigns, and its officers, and C. K. Wingo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the granting of consumer loans or with any other extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to include and to itemize in the Truth in Lending disclosure statement the amount of charges for credit life, accident, health or loss of income insurance as part of the finance charge, unless the amount of such charges is excluded from the finance charge because of the option available pursuant to § 226.4(a)(5) of regulation Z and disclosures are made in accordance with paragraph 2 following. In the event such charges are included in the finance charge, respondents shall make the following disclosure clearly and conspicuously on the disclosure statement on the front side of the page and immediately above or adjacent to the blank for the consumer's signature which consummates the loan transaction. Said disclosure shall be in the following form and set off from the text of the instrument by a black border:

NOTICE

The charges for credit life, accident, health or loss of income insurance [as applicable] are included in the finance charge. As a result, the annual percentage rate for your loan is higher than it would be if such charges were not included.

2. Offering or presenting to any consumer optional credit life, accident, health or loss of income insurance where respondents seek to invoke the elections provided by section 226.4(a)(5) of regulation Z unless respondents:

A. Read to each consumer at the time of the first personal meeting the following statement. A copy of the statement shall be given to the consumer simultaneously therewith. It shall be printed in a clear and conspicuous manner in 12-point boldfaced type on one side of a single sheet of paper which does not contain the consumer credit agreement:

NOTICE

Credit life, accident, health or loss of income insurance is entirely optional. You are not required to buy any such insurance to obtain a loan and your choice regarding insurance coverage will not be considered in our decision on approving a loan.

B. Retain a copy of the statement, signed and dated by the consumer and the employee who reads the statement to the consumer, for a period of two (2) years from the date shown thereon and provide a copy of said executed statement to the consumer at the time of the first personal meeting.

C. Present to the consumer as the first document at the time of consummating the loan or other consumer credit transaction a separate, written insurance authorization form which sets forth clearly and conspicuously that:

(i) The consumer has received credit approval up to a specified amount;

(ii) The consumer's decision with regard to the insurance available through respondents is not considered in granting the credit;

(iii) Insurance is optional and is not required to obtain the loan;

(iv) The amount of the total charge for credit life insurance, the total charge for credit accident and health insurance and/or the total charge for loss of income insurance along with the net proceeds payable in each instance;

(v) The monthly payments which would result from the consumer's election to take the loan, set forth in the following order from left to right across the document: (1) Without credit life, accident and health or loss of income insurance; (2) with credit life insurance only, (3) with credit accident and health insurance only, (4) with loss of income insurance only and (5) with credit life, accident and health and loss of income insurance; and, if applicable, (6) with other available forms of credit insurance; and

(vi) A blank signature and date line for each option set forth in (v) above for the consumer to indicate his election.

(vii) The borrower authorizes respondents on behalf of the borrower to pay the insurance premiums to the insurance company for such personal insurance which has been chosen.

D. Make the disclosures in the manner and form required by subparagraph C above on a separate document which contains no other printed or written material. The disclosures required by subparagraphs (i), (ii) and (iii) above shall not be smaller than 12-point type. A form in conformance with attachment A herein will be con-

sidered as in compliance with disclosure provisions of this subparagraph and subparagraph C. Respondent shall provide the consumer with an executed copy of the said insurance authorization form at the time a loan or other consumer credit transaction is consummated. Respondents shall retain a copy of said form for a period of two (2) years following its execution and make such copy available to the Federal Trade Commission or its staff for inspection and copying on request.

E. Cease and desist from:

(i) Failing to leave the Truth in Lending disclosure statement blank as to the cost of credit life, accident, health or loss of income insurance and all other information or amounts which are effected by the election or declination of insurance until the consumer has signed the written insurance authourization form required by subparagraph C above electing the insurance coverage.

(ii) Making any marks or otherwise instructing a consumer where to sign or date the separate insurance authorization form required by subparagraph C above in advance of the consumer's free and independent choice for such insurance.

(iii) Representing, by any means, that credit life, accident, health or loss of income insurance is required to obtain an extension of credit from respondents.

(iv) Discouraging by any means the declination of credit life, accident, health or loss of income insurance.

3. Offering or presenting to any consumer the "Cash Benefit Hospital Policy" or any insurance other than credit life, accident, health, loss of income or property insurance without including the charge therefor in the finance charge.

4. Failing to tell every consumer the purpose(s) of each signature requested by respondents on any document relating to a consumer credit transaction.

5. Supplying, orally or in writing, any information to a consumer which misleads or confuses the consumer, or which contradicts, obscures or detracts from the information to be disclosed by section I of this order or by regulation Z.

6. Failing to compute and disclose accurately the finance charge, as required by §§ 226.4 and 226.8 of regulation Z.

7. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of 1 percent as required by §§ 226.5 and 226.8 of regulation Z.

8 Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of regulation Z, in the manner, form and amount required by §§ 226.6, 226.7, 226.8, and 226.10 of regulation Z.

II

It is further ordered, That respondents Kelcor Corp., a corporation, its successors and assigns, and its officers, and C. K. Wingo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of household goods—fire insurance or other property insurance incident to any extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to include and to itemize the amount of charges for household goods—fire insurance or other property insurance as part of the finance charge, unless the amount of such premiums or charges are excluded from the finance charge as allowed by § 226.4(a)(6) of regulation Z. In the event such insurance charges are included in the finance charge, respondents shall make the following disclosure clearly and conspicuously on the side of the page and above or adjacent to the place for the consumer's signature. Said disclosure shall be in the following form and set off from the text of the instrument by a black border:

NOTICE

The charges for household goods—fire insurance or other property insurance are included in the finance charge. As a result, the annual percentage rate for your loan is higher than it would be if such charges were not included.

2. Offering or presenting to any consumer household goods—fire insurance or other property insurance unless respondents:

A. Present to the consumer at the time of consummating the loan or other consumer credit transaction a separate, written insurance authorization form which sets forth clearly and conspicuously that:

(i) The consumer's decision of whether to purchase insurance from or through respondents is or is not considered (as applicable) in granting the credit;

(ii) Household goods—fire insurance or other property insurance is or is not required (as applicable) to obtain the loan;

(iii) The total premium for household goods—fire insurance or any other property insurance along with the net proceeds payable;

(iv) The consumer may or may not elect (as applicable) to purchase property insurance through or from respondents;

(v) The consumer may or may not elect (as applicable) to furnish respondents with an existing property insurance policy or one purchased through a third party together with a loss payable clause or endorsement naming respondents as loss payee;

(vi) The consumer has ten (10) days from the date of disclosure to exercise the election, if any, disclosed in accordance with subparagraphs 2(A)(iv) and 2(A)(v) of section II of this order;

(vii) In the event such insurance is not required, a signature and date line for the consumer to indicate his election; and

(viii) In the event such insurance is required, a signature and date line for the consumer to indicate that he has read the disclosures.

B. Make the disclosures in the manner and form required by subparagraph A above on a separate document which contains no other printed or written material. The said disclosures shall not be smaller than 12-point type. Disclosures given in the form of attachment B herein will be considered as in compliance with the disclosure provisions of this subparagraph and subparagraph A. Respondents shall provide the consumer with an executed copy of the said insurance authorization form at the time the loan or other consumer credit transaction is consummated. Respondents shall retain a copy of said form for a period of two (2) years from the date shown thereon and make such copy available to the Federal Trade Commission or its staff for inspection and copying upon request.

C. In the event that household goods—fire insurance is optional, cease and desist from:

(i) Making any marks or otherwise instructing a consumer where to sign or date the separate insurance authorization form required by subparagraph A above in advance of the consumer's free and independent choice for such insurance.

(ii) Representing, by any means, that household goods—fire insurance or any other property insurance is required to obtain an extension of credit from respondents.

(iii) Discouraging by any means the declination of household goods—fire insurance or other property insurance.

3. Failing to tell every customer the purpose(s) of each signature requested by respondents on any document relating to a consumer credit transaction.

4. Supplying, orally or in writing, any information to a consumer which misleads or confuses the consumer, or which contradicts, obscures or detracts from the information required to be

given to a consumer pursuant to section II of this order.

III

It is further ordered, That whenever a credit transaction is principally conducted in a language other than English, e.g., Spanish, that any disclosures required by paragraphs 1 or 2 of sections I and II of this order be given in the form and manner prescribed therein but in the same language as that principally used in the credit transaction with the consumer.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of the corporate respondent at its general offices in San Antonio and in each of its subsidiary offices engaged in any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said copy of this order from each such person and retain said statement for a period of not less than two (2) years from the date of execution.

It is further ordered, That the corporate respondent notify the Commission within thirty (30) days of any change in the corporate respondent which may affect compliance obligations with regard to the extension of consumer credit arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Kelcor Corp. or its subsidiaries, and of his affiliation with another business or employment. In addition, the individual respondent named herein shall promptly notify the Commission of his affiliation with another business or employment whose principal activities include the granting of consumer loans or any extension of consumer credit or advertising to aid, promote or assist directly or indirectly any extension of consumer credit or his affiliation with another business or employment in which his own duties and responsibilities involve the granting of consumer loans or any extension of consumer credit or advertising to aid, promote or assist directly or indirectly any extension of consumer credit. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

[6750-01-M]

KELCOR CORP. AND C. K. WINGO

[File No. 752 3050]

ANALYSIS OF PROPOSED CONSENT AGREEMENT TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Kelcor Corp. and C. K. Wingo, individually and as an officer of said corporation.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of views and comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the consent order in light of the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Kelcor Corp. and C. K. Wingo, hereinafter referred to a respondents, are in the business of extending credit to consumers in the States of Texas, Louisiana and Oklahoma. In connection with such extensions of credit, respondents sell credit life and accident and health insurance to borrowers as well as property insurance and hospitalization insurance.

The complaint alleges that respondents require borrowers to buy credit life and accident and health insurance without including the charge for such insurance in the finance charge. The Truth in Lending Act requires that all charges for credit insurance imposed by the creditor be included in the finance charge unless the insurance coverage is voluntary. The complaint alleges that as a result of respondents' practices, the credit insurance is in fact required although language to the contrary exists in the Truth in Lending disclosure statement.

Similar allegations are made regarding the respondents' sale of property insurance. Although the law allows respondents to require such insurance the law also allows borrowers to choose the person through whom they wish to purchase the insurance. The complaint alleges that, despite language to the contrary in the Truth in Lending disclosure statement, borrowers are required to purchase insurance through respondents.

To eliminate the practices in regard to the insurance coverages outlined above, the order provides that borrowers be given an oral disclosure as well as clear and conspicuous written disclosures about the credit life and accident and health insurance and property insurance offered by respondents. Borrowers must be informed that such insurance is required or that it is voluntary, as the case may be. They must also be informed that such insurance, if required, may result in a higher annual percentage rate for the loan. If such insurance is voluntary, each borrower must sign a separate insurance authorization form electing the insurance. In this manner, a borrower will be adequately informed about the cost of credit being offered by respondents and have the opportunity to determine whether credit may be obtained elsewhere at a lower cost.

Another portion of the complaint charges respondents with violating the Truth in Lending Act and regulation Z by failing to include in the finance charge the premium for hospitalization insurance sold in connection with a substantial number of consumer credit transactions. According to § 226.4(a) all charges incident to the credit transaction must be included in the finance charge except charges for credit life and accident and health and property insurance that may be excluded pursuant to §§ 226.4(a)(5) and 226.4(a)(6) of regulation Z. Since the cash benefit hospitalization policy being offered is not credit insurance subject to the specific exclusions of § 226.4 the charge for such insurance must be included in the finance charge. The order therefore requires that respondents include the premium for the cash benefit hospitalization policy in computing the finance charge and the annual percentage rate or that such insurance not be offered incident to the credit transaction. Inclusions of the premium for the hospitalization insurance would result in a significant increase in the finance charge expressed as an annual percentage rate. Therefore, if respondents continue to offer the cash benefit hospitalization policy, borrowers will have an opportunity to decide whether respondents' charge for credit is competitive.

Other provisions in the proposed order require that respondents take no action which detracts from the order and the disclosure provision provided therein or take any action which discourages the declination of insurance in the event such insurance is optional. Respondents must also tell every borrower the purpose of each signature requested by respondents on any documents relating to a consumer credit transaction.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the proposed order or to modify in any way the terms of the proposed order.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-30116 Filed 10-24-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-4400]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Frederick, Weld County, Colo.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 38420 of the FEDERAL REGISTER of August 28, 1978.

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION CONTACT:

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

Due to a clerical error the following correction is made:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tri-Area Drainageway.	First Street	4970

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

Issued: October 10, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30083 Filed 10-24-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4417]

NATIONAL FLOOD INSURANCE

Proposed Flood Elevation Determinations for the Town of Herndon, Fairfax County, Va.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: The notice published on August 29, 1978, at 43 FR 38596 in the FEDERAL REGISTER, and in the *Reston Times* on August 24, and August 31, 1978, describing Young Avenue at confluence of Spring Branch under Folly Lick Branch in Herndon as being 317 feet, should be corrected to read: Young Avenue, 312 feet; and Confluence of Spring Branch, 317 feet.

FOR FURTHER INFORMATION CONTACT:

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

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

Issued: October 16, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30082 Filed 10-24-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-287-76]

INCOME TAX

Tax Treatment of Cemetery Perpetual Care Funds; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to tax treatment of cemetery perpetual care funds.

DATES: The public hearing will be held on November 29, 1978, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by November 14, 1978.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. the outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-287-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 642(j) of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for Wednesday, August 2, 1978, at page 33936 (43 FR 33936).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by November 14, 1978. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees can not be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

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

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

By direction of the Commissioner of Internal Revenue.

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

[FR Doc. 78-30181 Filed 10-24-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 993-8]

STATE AND FEDERAL ADMINISTRATIVE ENFORCEMENT OF IMPLEMENTATION PLAN REQUIREMENTS AFTER STATUTORY DEADLINES

Proposed Approval of an Administrative Order Issued by State of Colorado to Public Service Co. of Colorado, Denver, Colo.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the State of Colorado, through the Air Pollution Variance Board, to Public Service Co. of Colorado (PSCC) at its Arapahoe generating station in Denver, Colo. The order requires PSCC to bring its air emissions from units 3 and 4 into compliance with certain regulations contained in the federally approved Colorado State implementation plan (SIP) by June 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by this order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before November 24, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colo. 80295. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTRACT:

Mr. C. A. Baldwin, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colo. 80295, telephone 303-837-2361.

SUPPLEMENTARY INFORMATION: The order under consideration is set forth after the signature line below.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has preliminarily determined that the order complies with those requirements, but specifically requests public comment on those matters.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (sec. 304) would be similarly precluded. If approved, the order would also constitute an addition to the Colorado SIP.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon,[1] and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (Apr. 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

All interested persons are invited to submit written comments on proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. Final approval or disapproval will also be published in the FEDERAL REGISTER.

Dated: October 6, 1978.

ALAN MERSON,
Regional Administrator,
Region VIII.

BEFORE AIR POLLUTION VARIANCE BOARD, STATE OF COLORADO, COLORADO DEPARTMENT OF HEALTH, DIVISION OF ADMINISTRATION

PUBLIC SERVICE CO. OF COLORADO, ARAPAHOE STATION—FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This matter was heard by the Colorado Air Pollution Variance Board (hereinafter "the Board") at its scheduled meeting on July 20, 1978, at the Colorado Department of Health Building, Denver, Colo. The hearing was conducted at the request of the Public Service Co. of Colorado (hereinafter "the petitioner") for the purpose of determining whether this Board should grant an order authorizing a specific period of variance from the provisions of regulation No. 1, section I.A.1., of the Air Pollution Control Commission for the purpose of petitioner's installation of control equipment. Such installation is to be upon an express timetable and schedule and is to accomplish compliance of petitioner's Arapahoe Steam Electric Generating Station's west stack for boiler units 3 and 4 with the above-referenced regulations.

A quorum of the Variance Board was present during the entire hearing and participated in deliberation and voting on this matter with Mr. Heaton, Chairman, presiding.

FINDINGS OF FACT

In accord with the full and complete agreement of parties and based upon the evidence presented at and during the hearing on July 20, 1978, a record of the proceedings having been duly recorded and compiled by a certified shorthand reporter (which record is available to any party and for review by any member of the public, in accord with C.R.S. 1973, 25-7-116(3)), the Board has made the following findings of fact in support of its decision:

1. The petitioner's west boiler stack (units 3 and 4) at Arapahoe Station, located at 2601 South Platte River Drive in Denver, Colo., was in violation of the Commission's regulation No. 1, section I.A.1., as alleged in the cease and desist order issued by the Division on March 21, 1978. This finding is supported by petitioner's stipulation as to the validity and propriety of the Division's cease and desist order.

2. Petitioner's Arapahoe Station west boiler stack is not capable of compliance with applicable emission control regulations without modification and installation of control equipment. This finding is supported by petitioner's stipulation thereto and by inspections and evaluations conducted by the Division.

3. Petitioner desires the grant of a variance for the purpose of installing sufficient control equipment at its Arapahoe Station to accomplish compliance of the west boiler stack with all applicable rules and regulations of the Colorado Air Pollution Control Commission and further desires to take such steps as may be necessary to assure that this order of the Board is sufficient to meet all requirements of section 113(d) of the Federal Clean Air Act, as amended (42 U.S.C. 7413(d)) ("delayed compliance order"). This finding is supported by petitioner's stipulation thereto.

CONCLUSIONS OF LAW

In the course of its deliberations and ancillary to its findings and decision in this matter, the Board has made the following conclusions of law:

1. That the Colorado Air Pollution Variance Board has authority to accept, review, and grant or deny requests for hearings regarding requested variances and that it has the power to hold such public hearings, receive pertinent and relevant proof, rule on objections and motions, and do such other things as it deems necessary, proper, or desirable in order to effectively discharge its duties and responsibilities under article 7 of title 25, C.R.S. 1973, all on conformity with that statute and with article 4 of title 24, C.R.S. 1973. In the course of such a hearing, the Board has specific authority to determine whether alleged violations of emission control regulations exist or did exist and to consider the granting of variances. (Sec. 25-7-113 and 25-7-115, C.R.S. 1973, as amended.)

2. That in the course of performing duties and exercising responsibilities delegated to this Board, a hearing afforded petitioner was conducted in accord with procedural requirements of Procedural Rules for Proceedings Before the Air Pollution Control Commission and the Air Pollution Variance Board and the Colorado Administrative Procedure Act and all applicable provisions of the Colorado Air Pollution Control Act. The decision of the Board, set forth below, is based upon substantial evidence presented at the hearing.

3. That as concerns violations alleged by the Division, the petitioner's west boiler stack at Arapahoe Station is subject to 20 percent opacity standard as set forth in the Commission's regulation No. 1, section I.A.1. In addition, there is no basis for applying the 40 percent opacity standard, regulation No. 1, section I.A.2.(3).

[1] Published at 43 FR 44522 (Sept. 28, 1978).

4. That the Board, having determined violations to exist or have existed and having received a specific request for variance from the petitioner, has authority to grant a variance to the petitioner with the express conditions pursuant to authority granted by C.R.S. 1973, section 25-7-115(4). Petitioner has the burden of proof with regard to the necessity of propriety of any such variance. The determination of this Board is final and effective on the date of the grant or denial of variance to the petitioner, subject to further action by the Commission pursuant to C.R.S. 1973, 25-7-116(9) or the grant of a hearing by this Board, either or both of which must occur within thirty (30) days from the date of such grant or denial of variance.

DECISION AND ORDER

Upon formal motion, the Air Pollution Variance Board finds the Public Service Co. of Colorado, Arapahoe Station west boiler stack, at Denver, Colo., is in violation of Air Pollution Control Commission regulation No. 1, section I.A.1., pursuant to the stipulation of Public Service Co. of Colorado, at Denver, and based upon the testimony and exhibits presented by the Colorado Department of Health, Air Pollution Control Division.

The Colorado Air Pollution Variance Board hereby grants to the petitioner a variance from the application of Commission regulation No. 1, section I.A.1., and from the enforcement of a cease and desist order issued by the Division on March 21, 1978, which order pertains to the petitioner's Arapahoe Station west boiler stack at Denver, Colo.

This variance is granted to allow for completion of construction and preliminary testing of a new fabric filter dust collector (baghouse) on Arapahoe unit no. 3 and the installation of a new flue gas conditioning system on Arapahoe unit No. 4. Petitioner shall employ its best efforts and proceed as expeditiously as practicable to achieve final compliance, but in no event shall petitioner fail to attain compliance with regulation No. 1, section I.A.1., on its west boiler stack by June 15, 1979. This variance shall expire on the date of attainment of compliance, but in no event later than June 15, 1979, and shall be subject to the following specific terms and conditions:

1. Petitioner will implement a schedule for construction and final compliance as follows:

UNIT 3 INSTALLATION OF FABRIC FILTER DUST COLLECTOR

ACTIVITY AND DATE

PSCC Initiation of Project, May 1977.
APCD Authorization for Project to Proceed, September 29, 1977.
Completion of Engineering, July 31, 1978.
Start of Structural Steel Shipments, September 1, 1978.
Start of FFDC Components Shipments, September 1, 1978.
Start of FFDC Erection, September 15, 1978.
Completion of Shipment of All Material, March 15, 1979.
Completion of Erection, April 1, 1979.
FFDC Start-Up and System Check-Out, April 1, 1979.
In-Service Date, May 1, 1979.
Start of Velocity Traverse Testing for Monitor Installation, May 1, 1979.
Start Installation of Opacity Monitor, May 15, 1979.
Completion of Monitor Installation, June 15, 1979.
Completion of Fabric Filter Performance Evaluation, June 15, 1979.
Final Compliance Date, June 15, 1979.

UNIT 4 MODIFICATION OF ELECTROSTATIC PRECIPTATOR GAS CONDITIONING SYSTEM

ACTIVITY AND DATE

PSCC Initiation of Project, June 1, 1978.
Purchase Opacity Monitor, June 15, 1978.
Start of System Fabrication, August 1, 1978.
Completion of Shipment of Opacity Monitor and Accessories, September 30, 1978.
Completion of System Engineering, October 1, 1978.
Start of System Installation, November 1, 1978.
Complete Installation of Opacity Monitor, Recorders and System Check-Out, November 30, 1978.
Completion of Shipment of Gas Conditioning System Materials, January 1, 1979.
Completion of Electrostatic Precipitator Gas Conditioning System Installation, February 1, 1979.
Start-Up and Check-Out of System, February 1, 1979.
In-Service Date, March 1, 1979.
Unit Performance Test Completion, April 1, 1979.
Final Compliance Date, April 1, 1979.

Quarterly progress reports shall be submitted to the Air Pollution Control Division and the Variance Board in a form prescribed by the Board, and the Board shall be given 4 weeks prior notice of any anticipated failure to meet schedule dates.

2. During the interim period prior to the final compliance date, the following measures will be undertaken by the petitioner:

(a) At the completion of the baghouse installation on unit 3, a new opacity monitor will be installed on unit 3 in accord with the aforementioned schedule. A new opacity monitor will be purchased and installed on unit 4 ductwork in accord with the aforementioned schedule. Petitioner will continue to report on a monthly basis to the Division data recorded by these systems in a format previously established by the Division and presently in use.

(b) Such operation measures as are considered practical and beneficial with respect to minimization of emissions shall be undertaken on a continuous basis. Such measures shall include, but not be limited to, the following:

(i) Units 3 and 4 precipitators and No. 4 scrubber shall be inspected on a daily basis and, if needed, adjusted for most efficient operation as per petitioner operating procedures as prescribed in a letter to John Clouse from George P. Green, attached hereto as appendix A. As a result of the maintenance inspection or at any time that a problem becomes evident with the precipitators, a station service request will be originated and maintenance action initiated immediately and continued on a 24-hour per day basis until the deficiency is corrected.

(ii) Daily operational procedures will include inspection and maintenance of ash handling system, precipitator rapper controls and operations, gas conditioning system operation, and scrubber. The present gas conditioning system should be maintained and operated during the interim period of variance, until such time that it will be shutdown in order to install a new gas system on unit 4.

(c) An engineering evaluation on the half wave versus full wave rectification of the unit 4 electrostatic precipitator shall be completed and a report will be prepared. The report is to be submitted to the Board and the Division no later than September 1, 1978.

In addition, an engineering evaluation of the effectiveness of the unit 4 electrostatic precipitator electrical controls shall be performed. This study is to be completed with a report presented to the Board and the Division by September 30, 1978. If the studies indicate significant improvements to the precipitator, and the petitioner and the Division agree, such controls and adjustments shall be completed by June 15, 1979. If the petitioner and the Division fail to agree, either party may petition the Board for a Hearing.

(d) Continue the evaluation and development program on the unit 4 scrubber grid sections. Such evaluation to include rubber covered grids installed in the 2d and 3d level of A module, 317 stainless steel grid bars installed in lower section of A and B module, and ceramic grid bars installed on the 3d level of B module, installation of new solid rubber vertical stage dividers of the two upper levels of the scrubber, continuation of scrubber ball evaluation with the purchase and installation of a new rubber nitrile ball.

3. Petitioner will comply to the best of its ability with the requirements of all applicable provisions of the State and Federal regulations regarding air pollution and is fully aware that if final compliance is not achieved by July 1, 1979, sanctions will be imposed by USEPA (United States Environmental Protection Agency) pursuant to section 120 of Federal Clean Air Act (42 U.S.C. 7420).

4. For purposes of insuring that this order of the Colorado Air Pollution Variance Board will be acceptable to the USEPA for approval and issuance pursuant to section 113(d) of the Federal Clean Air Act, as amended (42 U.S.C. 7413(d)), the petitioner has expressed its desire to and does formally:

(a) Waive any and all its rights provided under Colorado law for appeal of or challenge to the substantive merits of a cease and desist order issued March 21, 1978, by the Air Pollution Control Division, Colorado Department of Health, and to any and all associated rights and claims for administrative and judicial stay of said order.

(b) Waive any and all of its rights provided under Colorado law for appeal of or challenge to the substantive merits of any order issued by the Colorado Air Pollution Variance Board granting a variance in this matter, and to any and all associated rights for or claims to administrative or judicial stay of such order.

(c) These waivers are entirely voluntary on the part of the petitioner, but have been specifically relied upon by the Board in the consideration of this variance and therefore are included as specific conditions of such variance.

5. Should the petitioner, Public Service Co. of Colorado, Denver, fail to meet any of the above terms and conditions of this variance, the variance shall forthwith be rendered null and void in accord with the provisions of C.R.S. 1973, 25-7-115(4).

The following members of the Air Pollution Variance Board voted in favor of this

decision: Thomas R. Heaton, Lewis H. Hoyle, M.D., A. George Setter, E. W. Karger, Thomas D. Smart, Jr., Michael L. Gilbert, Samuel E. Forbes.

The following members of the Air Pollution Variance Board voted against this decision:

Dated this 4th day of September 1978, *nunc pro tunc* to July 20, 1978.

AIR POLLUTION VARIANCE BOARD OF THE STATE OF COLORADO,

THOMAS R. HEATON,
Chairman.

[FR Doc. 78-29977 Filed 10-24-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1127]

[Ex Parte No. 293 (Sub-No. 8)]

STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES AND EMERGENCY OPERATING PAYMENTS

Proposed Rulemaking

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On August 15, 1978, the Rail Services Planning Office (RSPO) issued Interpretation No. 9 relating to the "900-day option" under which a commuter authority could purchase certain lines from Consolidated Rail Corp. (ConRail) for commuter service. In Interpretation No. 9, we stated that a rulemaking would be required to develop specific amendments to the Standards for Determining Commuter Rail Service Continuation Subsidies and Emergency Operating Payments (Standards) that would be required to bring the language of the Standards in conformance with the conceptual issue resolved by the interpretation. Comments are invited on changes and proposed amendments to the Standards which are required to reflect the concept that the owner of a rail facility is the dominant user and should bear the base costs associated with that facility. Comments received earlier in response to our January 11, 1978, request for comments on the restatement of the Standards to conform with the new Uniform System of Accounts (USOA) will also be addressed in the report to the final rulemaking to be issued in this proceeding.

DATES: Comments may be filed on or before December 18, 1978.

ADDRESS: An original and six copies of any comments should be mailed to: Rail Services Planning Office, 1900 L Street NW., Washington, D.C. 20036, Attn: Commuter Standards.

FOR FURTHER INFORMATION CONTACT:

David S. Rind, Cost Evaluation Branch, Rail Services Planning Office, Interstate Commerce Commission, 1900 L Street NW., Washington, D.C. 20036, 202-254-7552.

SUPPLEMENTARY INFORMATION: Interpretation No. 9 resolved the issues of the cost responsibilities of the parties at the conceptual level in a manner consistent with the compensation principles in the Final System Plan and the concepts originally embodied in the Standards. Several of the commuter authorities raised these issues while determining whether to exercise their "900-day option" to purchase certain rail lines from ConRail for commuter service.

RSPO invites interested parties to comment on any area of the Standards which they feel should be amended to reflect the concept expounded in Interpretation No. 9 to the Standards, which was issued August 15, 1978. In that interpretation, RSPO stated that the owner of a line is presumed to be the dominant user and shall bear the base costs associated with the line. In commenting on changes to the Standards, particular attention should be given to the speed factored gross tons formula, the return on investment portion of the Standards and related accounts, and any other area of the Standards where the base cost burden would be borne by the owner of the property as the principal user of that property.

Copies of Interpretation No. 9 are available from RSPO.

This decision does not significantly affect the quality of the human environment.

Issued October 19, 1978, by Richard J. Schiefelbein, Acting Director, Rail Services Planning Office.

By the Commission.

H. GORDON HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30182 Filed 10-24-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 30699]

OAKLAND SERVICE CASE

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 28, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues, (2) proposed stipulations, (3) proposed requests for information and for evidence, (4) statements of positions, and (5) proposed procedural dates. The Bureau of Pricing and Domestic Aviation will circulate its material on or before November 6, 1978, and the other parties on or before November 17, 1978. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated: Washington, D.C., October 20, 1978.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc. 78-30180 Filed 10-24-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

CALIFORNIA 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 California Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and end at 11 p.m. November 17, 1978; 9 a.m. to 3 p.m. November 18, 1978, at Peppertree Inn, 3850 State Street, Santa Barbara, Calif. 93105.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is to discuss programing and projects for the California Advisory Committee for fiscal years 1979 and 1980.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30104 Filed 10-24-78; 8:45 am]

[6335-01-M]

CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, RHODE ISLAND, VERMONT 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 the State Advisory Committees (SAC's) of the Northeastern Region of the Commission will convene at 4 p.m. and end at 8 p.m. on December 1, 1978; and convene at 9 a.m. and end at 5 p.m. on December 2, 1978, at the Hyatt Regency Hotel, Boston (Cambridge), Mass.

Persons wishing to attend this conference should contact any one of the Committee Chairpersons, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this conference is to discuss recommended Commission Programs 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 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30105 Filed 10-24-78; 8:45 am]

[6335-01-M]

ILLINOIS 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 Illinois Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 2 p.m. on November 20, 1978, at 230 South Dearborn, Room 3280, Chicago, Ill. 60604.

Persons wishing to attend this planning meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn, Room 3280, Chicago, Ill. 60604.

The purpose of this planning meeting is to discuss the following projects: Special Education Program, Housing Issues and Chicago School Desegration.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30106 Filed 10-24-78; 8:45 am]

[6335-01-M]

IOWA, KANSAS, MISSOURI, NEBRASKA 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 the State Advisory Committees (SAC's) of the Central States Region of the Commission will convene at 12 noon and will end at 6 p.m. November 30, 1978; and 9 a.m. to 3:30 p.m., December 1, 1978, at the Continental Hotel, 11th and Baltimore, Harnett Room, 5th Floor, Kansas City, Mo. 64105.

Persons wishing to attend this conference 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 conference is to finalize regional recommendations for Commission program planning and to

organize the work schedule for the coming year.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30107 Filed 10-24-78; 8:45 am]

[6335-01-M]

MINNESOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 6 p.m. and end at 9 p.m. on November 20, 1978, at the Radisson Hotel, 11 East Kellogg Boulevard, St. Paul, Minn. 55101.

Persons wishing to attend this planning meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn, Room 3280, Chicago, Ill. 60604.

The purpose of this planning meeting is to review data collected on the Police Study and to discuss field interviews.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30108 Filed 10-24-78; 8:45 am]

[6335-01-M]

MONTANA 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 Montana Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and will end at 1 p.m., on November 11, 1978, at Rocky Mountain College, the Fortin Center, Billings, Mont.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

The purpose of this meeting is to develop future SAC projects for fiscal years 1979 and 1980.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-3109 Filed 10-24-78; 8:45 am]

[6335-01-M]

OHIO 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 Ohio Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 3 p.m. on November 18, 1978, at the Netherland Hilton, 5th and Race, Julip Room, Cincinnati, Ohio 45201.

Persons wishing to attend this planning meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn, Room 3280, Chicago, Ill. 60604.

The purpose of this planning meeting is to discuss the proposed Police Community Project and plan for fiscal year 1979. The Committee will also review Commission's 1980 and 1981 projected programs.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30110 Filed 10-24-78; 8:45 am]

[6335-01-M]

TENNESSEE 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 Tennessee Advisory Committee (SAC) of the Commission will convene at 2 p.m. and will end at 5:30 p.m. on November 17, 1978, at University Inn, 1700 Clinch Boulevard, A-N-B Room, Knoxville, Tenn.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Building, 75 Piedmont Avenue NE, Atlanta, Ga. 30303.

The purpose of this meeting is a followup to the recent released SAC report, "Civic Crisis—Civic Challenge: Police-Community Relations in Memphis," to discuss National and SAC programing for fiscal year 1981.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30111 Filed 10-24-78; 8:45 am]

[6335-01-M]

VIRGINIA 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 Virginia Advisory Committee (SAC) of the Commission will convene at 6 p.m. and will end at 9 p.m., on November 9, 1978, at City Hall, room 106, Richmond, Va.

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 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 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30112 Filed 10-24-78; 8:45 am]

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

COMPUTER PERIPHERALS, COMPONENTS, AND RELATED TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on Tuesday, November 21, 1978, at 9 a.m. in Room 13029, the Federal Building, 450 Golden Gate Avenue, San Francisco, Calif.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3,

1973. On December 20, 1974, January 13, 1977 and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer peripherals, components and related test equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The committee meeting agenda has four parts:

GENERAL SESSION

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Review of committee activities.

EXECUTIVE SESSION

4. Discussion of matters properly classified under Executive Order 11652, dealing with the United States and COCOM control program and strategic criteria related thereto.

The general session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the committee. Written statements may be presented at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the committee during the Executive Session of the meeting have been properly classified under Executive Order 11652. All committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41071).

Dated: October 19, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-30076 Filed 10-24-78; 8:45 am]

[3510-25-M]

NUMERICALLY CONTROLLED MACHINE TOOL TECHNICAL ADVISORY COMMITTEE

Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Numerically Controlled Machine Tool Technical Advisory Committee will be held on Monday, November 20, 1978, at 10 a.m. in room 3708, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1975. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to numerically controlled machine tools, including technical data related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The committee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652, dealing with the United States and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act Pub. L. 94-409, that the matters to be discussed in Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because Executive Sessions will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the commmittee during the meeting have been properly classified under the Executive order. All committee members have appropriate security clearances.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Numerically Controlled Machine Tool Technical Advisory Committee and of any subcommittees thereof is hereby published.

Dated: October 19, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

NUMERICALLY CONTROLLED MACHINE TOOL TECHNICAL ADVISORY COMMITTEE

Determination

In response to written requests of representatives of a substantial segment of the numerically controlled machine tool industry, the Numerically Controlled Machine Tool Technical Advisory Committee was established

by the Secretary of Commerce pursuant to section 5(c)(1) of the Export Administration Act of 1969, 50 U.S.C. App. 2404(c)(1)(1976), to advise the Department of Commerce with respect to questions involving (A) technical matters, (B) worldwide availability, and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to numerically controlled machine tools, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls.

The committee, which currently has 10 members representing industry and eight members representing Government agencies, will terminate no later than August 29, 1980, unless extended by the Secretary of Commerce or her designee. All members of the committee have the appropriate security clearances.

The committee's activities are conducted pursuant to 50 U.S.C. App. 2404(c)(1); the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976); and the Office of Management and Budget Circular A-63 (Revised), Advisory Committee Management, effective May 1, 1974. Section 10 of the Federal Advisory Committee Act as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, provides that advisory committee meetings or portions thereof may be exempt from the open meeting and public participation requirements of the Federal Advisory Committee Act if the President, or the head of the agency to which the advisory committee reports, determines that such meetings or portions thereof may be closed to the public in accordance with 5 U.S.C. 552b(c).

5 U.S.C. 552b(c)(1) provides that agency meetings or portions thereof may be closed to the public where they are likely to disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Eight Notices of Determination authorizing the closing of meetings, or portions thereof, of the Numerically Controlled Machine Tool Technical Advisory Committee and its formal subcommittees, dealing with security classified matters, have been approved in the past.

In order to provide advice to the Department under the terms of its charter, the committee and formal subcommittees thereof will continue to hold a series of meetings dealing with the matters set forth in the first paragraph of this Determination. These meetings will include discussions of the COCOM control list as it relates to the commodities and technical data under its purview, and with the foreign availability of these commodities and technical data. In addition, the committee and its formal subcommittees will be preparing recommendations for the Department's consideration relating to the U.S. Government's negotiating position on COCOM-related matters. Much of the information relating to the COCOM control list, as well as proposed changes, is now or will be security classified for national defense or foreign policy reasons, pursuant to Executive order No. 11652, 3 C.F.R. 339 (1974) or Executive Order No. 12065, 43 F.R. 28949 (1978). In order for the committee and its formal subcommittees to provide required advice to the U.S. Government, it will be necessary to provide the committee and its formal subcommittees with such classified material. Therefore, the series of meetings or portions of meetings of the committee and of subcommittees thereof that will involve discussions of matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, must be closed to the public. The remaining series of meetings or portions thereof will be open to the public.

Accordingly, I hereby determine, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, P.L. 94-409, that the series of meetings or portions of meetings of the committee and of any subcommittees thereof, dealing with the aforementioned classified materials shall be exempt, for the period from the date of the signing of this determination, to August 29, 1980, from the provisions of section 10)(a)(3), relating to open meetings and public participation therein, because the committee and subcommittee discussions will be concerned with matters listed in 5 U.S.C. 552b(c)(1). The remaining series of meetings or portions thereof will be open to the public.

Dated: September 6, 1978.

ELSA A. PORTER,
Assistant Secretary for Administration.

Dated: September 5, 1978.

DANIEL GARBERN,
Acting Assistant General Counsel

[FR Doc. 78-30075 Filed 10-24-78; 8:45 am]

[3510-15-M]

Maritime Administration

[Docket No. S-624]

CTS ASSOCIATES

Application

Notice is hereby given that CTS Associates, Wall Street Plaza, Suite No. 1630, New York, N.Y. 10005, has filed an application dated October 3, 1978, with the Maritime Subsidy Board (the Board) pursuant to Title VI of the Merchant Marine Act, 1936, as amended (the Act), for an operating-differential subsidy contract, to expire December 31, 1978, unless extended, to operate the SS *Cove Engineer*, 31,991 deadweight tons and SS *Cove Ranger*, 29,305 deadweight tons, in the carriage of bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the U.S. to ports in the Union of Soviet Socialist Republics (U.S.S.R.), or other permissible ports of discharge. Dry and liquid bulk cargoes may be carried from the U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R., or other permissible ports of discharge.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in Title 46 of the Code of Federal Regulations, Part 294.

For purposes of section 605(c) of the Act, it should be assumed that should the Board grant the requested approval, the vessels named above will engage in the described trade, on a full-time basis, during the indicated time period. Under such approval, each voyage must be approved for subsidy assistance prior to its commencement, and the Board will act on such request(s) as an administrative matter for which there is no requirement for section 605(c) notice(s).

Any person having an interest in the granting of the application and who would contest a finding by the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes previously specified is inadequate, must on or before October 31, 1978, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's Rules of Practice and Procedure (46 CFR 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605(c) of the Act, and, with as much specificity as possible,

the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the subject application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application herein described, with respect to the vessels to be operated in an essential service and served by citizens of the U.S., would be in addition to the existing service or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such actions as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS)).

Dated: October 19, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-30114 Filed 10-24-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

PACIFIC FISHERY MANAGEMENT COUNCIL'S ANCHOVY AND JACK MACKEREL ADVISORY SUBPANELS AND PLAN DEVELOPMENT TEAMS

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Anchovy and Jack Mackerel Advisory Subpanels and Plan Development Teams of the Pacific Fishery Management Council established under section 302(a) of the Fishery Conservation and Management Act (Pub. L. 94-265) will conduct a joint meeting to discuss the specification of the anchovy domestic annual harvest for the 1979-80 season and beyond, and to review the draft of Jack Mackerel Fishery Management Plan.

DATES: The meeting will convene on Monday, November 13, 1978, at 10 a.m. and adjourn at approximately 5 p.m. This meeting is open to the public.

ADDRESS: The meeting will take place at the California Fish and Game Office, located at 350 South Golden Shores, Long Beach, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Second Floor, Portland, Oreg. 97201.

Dated: October 20, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-30117 Filed 10-24-78; 8:45 am]

[3510-22-M]

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to: (1) Review status reports on development of fishery management plans; (2) consider foreign fishing applications, if any; and (3) conduct other fishery management business.

DATES: The meeting will convene on Tuesday, November 14, 1978, at 1:30 p.m. and adjourn on Friday, November 17, 1978, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place in the Hacienda Room at the International American Motor Inn, 2601 Severn Avenue, Metairie, La.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609, telephone 813-228-2815.

Dated: October 20, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-30118 Filed 10-24-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS FROM PAKISTAN

Adjusting Import Restraint Level

OCTOBER 20, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase for flexibility and carryover in Category 363 (cotton terry and other pile towels) during the agreement year which began on January 1, 1978.

(A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 342), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).)

SUMMARY: Paragraphs 7(b) and 8(a) of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan provide, respectively, for percentage increases in certain specific category ceilings during an agreement year and for the carryover of shortfalls in certain ceilings from the previous agreement year. Pursuant to the foregoing paragraphs of the bilateral agreement, the import restraint level established for Category 363 is being increased to 5,687,000 numbers for the 12-month period which began on January 1, 1978 and extends through December 31, 1978.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On January 27, 1978, a letter dated January 19, 1978, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (43 FR 3738), which established import restraint levels for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in Pakistan and exported to the United States during the 12-month period which began on January 1, 1978, and extends through December 31, 1978.

In the letter published below the Commissioner of Customs is directed, in accordance with the provisions of the bilateral agreement, to adjust the

level of restraint previously established for Category 363 to 5,687,000 numbers.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY
FOR INDUSTRY AND TRADE,
Washington, D.C., October 20, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On January 19, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton textile products in certain specified categories, produced or manufactured in Pakistan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to paragraphs 7(b) and 8(a) of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on October 25, 1978, to increase the 12-month level of restraint established for cotton textile products in Category 363 to 5,687,000 numbers.[2]

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-30080 Filed 10-24-78; 8:45 am]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan, which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1977.

[3128-01-M]

DEPARTMENT OF ENERGY

Office of the Secretary

URANIUM HEXAFLUORIDE

Separative Work Charges and Base Charges for Natural Uranium

The Department of Energy (DOE) hereby announces revisions to the notice entitled "Uranium Hexafluoride: Separative Work Charges, and Base Charges for Natural Uranium; as published in the FEDERAL REGISTER on September 29, 1977 (42 FR 51636), hereinafter referred to as the notice.

Paragraph 1 of the notice is deleted and the following paragraph 1 is inserted in lieu thereof:

1. *Separative work charges.* (a) The charge per separative work unit furnished pursuant to requirements-type contracts is $83.15 or the ceiling charge computed in accordance with the provisions of such contracts, whichever is the lesser charge. Effective April 24, 1979, the charge per separative work unit furnished pursuant to requirements-type contracts will be $98.30 or the ceiling charge computed in accordance with the provisions of such contracts, whichever is the lesser charge.

(b) The charge per separative work unit furnished pursuant to other than requirements-type contracts is $74.85. Effective December 30, 1978 (61st day) the charge per separative work unit furnished pursuant to other than requirements-type contracts will be $88.65.

Effective date: This notice is effective (October 25, 1978).

Dated at Washington, D.C., this 19th day of October 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 29976 Filed 10-24-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. RP78-74]

ALGONQUIN GAS TRANSMISSION CO.

Order on Purchased Gas Cost Adjustment Clause Filing Requirement

OCTOBER 13, 1978.

By letter filed June 27, 1978, Algonquin Gas Transmission Co. (Algonquin), seeks to identify its cost of service filing obligations under § 154.38(d)(4)(vi)(b) of the Commission's Regulations under the Natural Gas Act. The letter states that as a result of the recently approved Algonquin rate cases settlement,[1] it will not be required to restate its Base Tariff Rate and file an overall cost of service until July 31, 1980. For the reasons set forth below, the Commission will treat the letter as a Petition for a Declaratory Order and, upon review of the applicable regulations and Algonquin's letter, the Commission shall affirm Algonquin's interpretation of the applicable FERC regulations.

Algonquin's FERC Gas Tariff contains a PGA filed pursuant to § 154.38(d)(4) of the Commission's Regulations. Subsection (vi)(a) requires the filing of a cost of service study at least every 36 months to establish new Base Tariff Rates. The 36-month period begins to run according to subsection (vi)(b) which states:

> (b) If a section 4(e) case is filed before the expiration of the 36-month period, a new 36-month period will start running when the proposed rates go into effect. Rates determined by the Commission in a section 4(e) or a 5(a) proceeding or rates in a settlement agreement approved by the Commission shall establish the new Base Tariff Rate when they become effective pursuant to a final order, and a new 36-month period will start running.

Algonquin has recently settled its section 4(e) rate proceedings in Docket Nos. RP73-112, RP74-92, and RP75-88, which settlement was approved by Commission order issued March 31, 1978. The settlement covered a 4-year period and established new Base Tariff Rates made effective August 1, 1977. In settlement of the RP75-88 proceeding the parties agreed to two locked-in refund periods[2] utilizing actual per book figures and a test period approach[3] to determining the rates effective August 1, 1977. On the basis of these settlement determinations, Algonquin asserts that it has been subject to continuing full rate review for the period January 1, 1974 (RP73-112) through October 31, 1977 (RP75-88), and that the rates effective August 1, 1977, are "rates in a settlement agreement approved by the Commission" which will start a new 36-month period running. Algonquin further states that these particular facts of its recent rate case determinations and the language of the applica-

[1] See: *Algonquin Gas Transmission Co.*, letter order issued March 31, 1978, in Docket Nos. RP73-112, RP74-92, and RP75-88.

[2] RP75-88 locked-in refund period: (A) Nov. 1, 1975 to Oct. 31, 1976 (B) Nov. 1, 1976 to Jul. 31, 1977.

[3] Future period commencing Aug. 1, 1977 based on a 12-month test period ending Oct 31, 1977.

ble regulations establish August 1, 1980, as the date on which it will next be required to restate its Base Tariff Rate and be subject to a full cost of service review unless a section 4(e) case is filed in the intervening period.

The Commission affirms Algonquin's interpretation. Although the language as to the 36-month period is not free from ambiguity, it appears that as to the particular facts related to Algonquin, its interpretation is correct. The Base Tariff Rates established as of August 1, 1977, were based upon an updated full cost of service review. Thus it is appropriate to grant Algonquin's request and affirm its interpretation of section 154.38(d)(4)(vi) of the Regulations that it need not restate its Base Tariff Rates and be subject to a full cost of service review prior to July 31, 1980. The Commission notes that by separate order a rulemaking proceeding will be initiated to clarify the regulations as to the beginning of the 36-month period.

The Commission finds and orders: The petition for declaratory order is hereby granted as set forth and for the reasons set forth in the body of this order.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30122 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-256]

ALGONQUIN LNG, INC. AND ALGONQUIN GAS TRANSMISSION CO.

Order Providing Formal Hearing and Granting Interventions

OCTOBER 13, 1978.

On March 29, 1978, Algonquin LNG, Inc. (Algonquin LNG) and Algonquin Gas Transmission Co. (Algonquin Gas), filed in docket No. CP78-256 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas and storage of liquid and gas-phase liquified natural gas (LNG) for certain participating resale companies for the period extending through May 31, 1979. The application requested a limited-term and temporary certificate. By letter order issued September 21, 1978, the Commission granted the requested temporary authority.

A similar service was rendered under a temporary certificate in docket No. CP77-413, which terminated on May 31, 1978. The only outstanding matter in that docket involves treatment of revenues and can be dealt with apart from this docket. In addition, similar service was provided under temporary certificates during the winters of 1974-75, 1975-76, and 1976-77.

The letter order of September 21, 1978, stated: "This authorization is issued without prejudice to such ultimate disposition of the proceedings as the record many require." The hearing provided for by this order is undertaken to examine the several issues raised by the storage service provided by Algonquin LNG.

Algonquin LNG proposes to utilize its LNG storage facilities at Providence, R.I., to receive, store, and redeliver LNG belonging to others in quantities of up to 248,000 barrels.

It states that it has a 600,000 barrel capacity LNG storage tank at Providence which is currently being used, and would continue to be used, in part, for the benefit of Providence Gas Co. (Providence Gas). It further states that this tank is located in the intrastate phase, or phase 1, of its terminal facilities, and that an application to construct and operate phase 2 or the interstate phase is pending in docket No. CP73-139.

During the 1978-79 heating season, Algonquin LNG states that it will have approximately 248,000 barrels, after allowance for tank heel, of available capacity over and above the 348,000 barrels of capacity which has been dedicated to Providence Gas under a long-term arrangement to supply its local distribution system. It is further asserted that there will be available liquefaction capacity and a supply of LNG in excess of the LNG storage capacity available during the 1978 summer season. Consequently, certain additional resale companies, including regular distribution curtomers of Algonquin Gas, will be able to use the available capacity of Algonquin LNG's tank to store gas for use during the 1978-79 winter. Algonquin LNG states that the additional storage service will permit participating resale customers to forego interruptible sales during summer periods and convert such gas through storage into an additional supply for high priority requirements during the following winters.

Algonquin LNG has entered into agreements with the Connecticut Gas Co. and the Valley Gas Co. for storage service during the 1978-79 winter season. It is asserted that the terms of such service will be for the period ending May 31, 1979, and that no new facilities will be required to effectuate the service. The storage service will be provided at a rate which is the subject of a proposed settlement agreement now pending before the Commission in docket No. CP75-14, *et al.*

The application states that the deliveries to Algonquin LNG's Providence storage facilities will be made by truck, and redelivery will be made either in liquid form by truck or gaseous form by pipeline. It is further stated that redelivery in gaseous form by pipeline will be by means of displacement. Algonquin LNG will gasify the LNG and physically deliver it to Providenee Gas Co. which will back off equivalent volumes from Algonquin gas. Algonquin Gas, in turn, will deliver equivalent volumes to other customers on a basis which, it asserts, will not impair service to its remaining customers.

The joint application filed in Docket No. CP78-256, was noticed in the FEDERAL REGISTER on April 13, 1978 (42 FR 15481). Connecticut Gas Co., Valley Gas Co., and Boston Gas Co., filed petitions to intervene in Docket No. CP78-256. No other petitions to intervene, notices of intervention, nor protests to filing of the application have been filed.

The Commission is concerned about the substantial increase in trucking of LNG to and from the Providence terminal that would result if this proposal were approved. Although Algonquin claims the bulk of any such transportation is not within the jurisdiction of this Commission, the FERC is charged with the responsibility of considering any safety and environmental issues involved with terminal operations generally. With regard to this concern for safety, the Commission is aware of the functions of the Interstate Commerce Commission and the U.S. Department of Transportation in this area and would welcome the active participation of these agencies in this matter.

The issue of Commission jurisdiction over the service to be rendered to Providence Gas Co. has not been finally determined. Applicants are invited to address this issue as well as the propriety of the contemplated use of the facilities in view of the fact that the operation of the Providence terminal was not considered in the Distrigas of Massachusetts Corp., proceeding in Docket No. CP78-216, *et al.* and, so, has not been certificated by the Commission.

The question also arises as to the appropriate treatment of "Allowance for Funds Used During Construction" (AFUDC) including whether the continued capitalization of costs is appropriate and how Algonquin LNG contemplates recovering these costs. In addition, the treatment of revenues received by Algonquin Gas for the redelivery service of gaseous volumes should be pursued in the hearing. The charge for storage, however, is dependent upon final resolution of the proposed settlement in Docket No. CP75-14, *et al.* Applicants should also present testimony demonstrating the need for the contemplated service and whether there are plans to continue to offer this or comparable winter service.

The Commission is aware that this service is now in its fifth year and has been renewed annually by separate applications which have resulted in temporary certificates. This procedure has failed to permit resolution thus far of basic jurisdictional issues as to the facility itself, and the transportation and storage service, as well as the question of whether the public convenience and necessity is served best by pre-granted abandonment. The level of service in Docket No. CP78-256, together with an increase in the volumes of LNG to be transported by truck make necessary the examination of this matter by formal hearing at this time. For these reasons we set this docket for formal hearing and direct the filing of testimony by the Applicants on the several issues in this matter discussed above as well as whether the expanded service is in the public interest.

The Commission finds: (1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issues presented in these proceedings as hereinbefore described.

(2) Participation in these proceedings by Connecticut Gas Co., Valley Gas Co., and Boston Gas Co., may be in the public interest.

The Commission orders: (A) These proceedings are hereby set for formal hearing and disposition.

(B) Pursuant to the Natural Gas Act, particularly sections 4, 5, 7, and 15 thereof, and the Commission Rules of Practice and Procedure (18 CFR Chapter 1, Subchapter E), a Prehearing Conference shall be held on December 21, 1978, commencing at 10 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, to discuss procedural matters and to clarify, to the degree possible, subjects at issue.

(C) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR, section 3.61), shall preside at the prehearing conference in this proceeding with authority to establish and change all procedural dates, and to rule on all motions (with the sole exceptions of motions to consolidate or sever and motions to dismiss), as provided for the Rules of Practice and Procedures.

(D) The direct case of the Applicants and any Interveners in support shall be filed and served on all parties, the Presiding Judge, and the Commission Staff on or before October 13, 1978. All parties in opposition, and the Commission Staff, may file their cases in chief on or before December 4, 1978, and should said filing give rise to the need for the Applicants and supporters to file in rebuttal, they may do so on or before December 11, 1978.

(E) The Connecticut Gas Co., Valley Gas Co., and Boston Gas Co. are permitted to intervene in the instant proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* The participation, of such interveners shall be limited to matters effecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order the Commission entered in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30123 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. E-8755]

CENTRAL KANSAS POWER CO., INC.

Compliance Filing

OCTOBER 17, 1978.

Take notice that on July 31, 1978, Central Kansas Power Co., Inc., ("CKP") tendered for filing as part of CKP's FERC Electric Tariff, Volume No. 1, the following tariff sheets:

Volume No. 1—Effective

Original Sheets Nos. 1, 2, 3, 4, and 5—Sept. 16, 1978.

These sheets are all being filed in compliance with the Commission's Order Affirming Initial Decision issued on June 30, 1978, in Docket No. E-8755 and reflect adjustments in rates in accordance with such Order, according to CKP.

CKP states that a copy of this filing has been mailed to Sunflower Electric Cooperative, Inc., its only jurisdictional electric customer, and to the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said application should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before October 27, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of the filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30125 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-512]

CLAY BASIN STORAGE CO.

Amendment to Application and Petition To Amend Order

OCTOBER 18, 1978.

Take notice that on September 25, 1978, Clay Basin Storage Co. (Applicant), 100 Broadway, New York, N.Y. 10005, filed in Docket No. CP77-512, an amendment to its application and a petition to amend the order of July 3, 1978, issued by the Commission in *Mountain Fuel Resources, Inc., et al.,* Docket Nos. CP76-285, *et al.,* pursuant to section 7(c) of the Natural Gas Act so as to provide for the extension and amendment of the Clay Basin Interim Storage Arrangements designed for the preservation of a portion of the payback gas to which certain of the east-of-California (EOC) customers of El Paso Natural Gas Co. (El Paso), are entitled under the Commission's Opinion No. 800-B, issued December 30, 1977, in Docket No. CP74-289, *et al.,* all as more fully set forth in the amendment and petition on file with the Commission and open to public inspection.

It is indicated that by order issued September 30, 1977, in *Moutain Fuel Resources, Inc., et al.,* Docket Nos. CP76-285, *et al.,* Applicant and other parties received temporary certificate authorization for the interim utilization of a portion of the Clay Basin Storage Field located in Daggett County, Utah, for the protection of service to El Paso's EOC customers' Priority 1 and 2 requirements through December 31, 1979. Thereafter, the parties to the Clay Basin Interim Storage Arrangements entered into various agreements and made appropriate filings necessary to extend the term of such arrangements whereby protection could be afforded to the Priority 1 and 2 requirements of El Paso's EOC customers for a further period extending through September 30, 1980, it is said. Applicant states that by order issued July 3, 1978, in *Moutain Fuel Resources, Inc., et al.,* Docket Nos. CP76-285, *et al.,* it received temporary authorization for its part of the extended Clay Basin Interim Storage Arrangements.

It is indicated that in Opinion No. 800-B, the Commission approved El Paso's proposal to restore to certain of its EOC Customers certain volumes of natural gas. On August 30, 1978, El Paso filed in Docket No. CP77-289 for authorization to transport and deliver all payback quantities by the end of February 1979, it is said. Applicant states that Southwest Gas Corp. (Southwest) advised El Paso that it, Southwest, desired to use a portion of the payback gas to which it is entitled

after February 1979, and would like to store these volumes for its use. It is indicated that in order to accommodate Southwest, Applicant and El Paso have entered into a Letter Agreement amending the Clay Basin Storage Arrangements. The amended agreement would permit the preservation, on an interim basis, through September 30, 1980, of a portion of the payback gas to which Southwest is entitled, it is stated. Applicant also says that it, El Paso, and Southwest have entered into a Letter Agreements whereby El Paso would sell to Applicant and deliver to Northwest Pipeline Corp. (Northwest) for Applicant's account, those quantities of payback gas to be stored for Southwest. Northwest would then transport such quantities to the Clay Basin Storage Field, located in Daggett County, Utah, where such gas would be delivered to Mountain Fuel Resources, Inc. for injection into the field for Applicant's account, it is indicated. The gas would be held in storage until Southwest calls for equivalent quantities, but not before September 30, 1980, says Applicant. Applicant states that the return of the stored pay back gas to Southwest would be accomplished by essentially reversing the above described procedures.

Applicant states that it would purchase the payback gas for storage from El Paso at El Paso's then-current Rate Schedule G rate, and that it would sell such returned payback gas to Southwest at a rate equivalent to the rate in effect for El Paso's sales of gas to Southwest, at the time and place of delivery, with any difference between the cost of such gas to Applicant and the proceedes of its sale to Southwest to be reflected as a credit or debit, as the case may be, in the calculation of the surcharge.

Any person desiring to be heard or to make any protest with reference to said amendment and petition to amend should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or, 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30128 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP72-122 and RP78-51 (PGA78-3)]

COLORADO INTERSTATE GAS CO.

Extension of Time

OCTOBER 17, 1978.

On October 4, 1978, Commission Staff Counsel filed a motion to extend the procedural dates set in the Commission's order of September 25, 1978, in this proceeding. The motion states that CIG would like to narrow certain issues in order to prevent its case in chief from being overly voluminous and burdensome and that the schedule established by the order does not allow sufficient time for adequate discovery and meaningful settlement discussions.

Upon consideration, notice is hereby given that the procedural schedule as set forth in the Commission's order of September 25, 1978, in this proceeding is modified as follows:

Informal settlement conference—November 28, 1978, 10 a.m.
Filing of CIG's case in chief—December 15, 1978.
Filing of Staff's statement of position—January 8, 1979.
Prehearing conference—January 23, 1979, 10 a.m.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30130 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-17]

COLUMBIA GAS TRANSMISSION CORP.

Application

OCTOBER 18, 1978.

Take notice that on October 10, 1978, Columbia Gas Transmission Corp. (Applicant), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, filed in Docket No. CP79-17, an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)), for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing March 1, 1979, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the system of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total estimated cost of the proposed facilities would not exceed $6,000,000, with the cost of no single project to exceed $1,500,000. Applicant indicates that the cost of the proposed facilities would be financed with funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protestants filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30129 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-16]

COLUMBIA GAS TRANSMISSION CORP.

Application

OCTOBER 18, 1978.

Take notice that on October 10, 1978, Columbia Gas Transmission Corp. (Applicant), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, filed in docket No. CP79-16, an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)), for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing March 1, 1979, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $300,000, which cost would be financed from funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30131 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. RP75-8]

COMMERCIAL PIPELINE CO., INC.

PGA Filing

OCTOBER 17, 1978.

Take notice that on October 6, 1978, Commercial Pipeline Co., Inc. (Commercial) tendered for filing revised substitute 26th revised sheet No. 3A reflecting purchased gas adjustments and effective dates as set out below:

Sheet No.	Current adjustment	Cumulative adjustments	Effective date
Revised substitute 26th revised sheet No. 3A	0.0376	0.0008	Sept. 23, 1978.

Commercial states that these revisions track precisely similar revisions in the tariff of Cities Service Gas Co., its sole supplier. Commercial requests waiver of notice to the extent required to permit said tariff sheets to become effective as proposed.

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 section 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 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30126 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ES79-4]

CONSUMERS POWER CO.

Application

OCTOBER 18, 1978.

Take notice that on October 11, 1978, Consumers Power Co., a corporation organized under the laws of the State of Michigan, with its principal business office in Jackson, Mich., filed an application pursuant to section 204 of the Federal Power Act, seeking authority to issue up to $400 million unsecured short-term notes and commercial paper, on or before December 31, 1979, and to mature on or before December 31, 1980.

The short-term debt will be used to finance construction costs pending permanent financing.

Any person desiring to be heard or to make any protests with reference to said Application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with the requirements of the Commission's rules and practice and procedure (18 CFR 1.8 or 1.10) on or before November 2, 1978. The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30132 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Project No. 2004]

HOLYOKE WATER POWER CO.

Application for Change in Land Rights

OCTOBER 17, 1978.

Public notice is given that Holyoke Water Power Co. ("applicant") has filed an application under the Federal Power Act (16 U.S.C. §§ 791a-825r) for a change in land rights for FERC Project No. 2004. The project is located on the Connecticut River in the city of Holyoke, Hampden County, Mass. (Correspondence to: Leon E. Maglathlin, vice president, Holyoke Water Power Co., One Canal Street, Holyoke Mass. 01040 and Maurice L. Zilber, Esquire, Peabody Brown, Rowley, and Storey, One Boston Place, Boston, Mass. 02108.)

Applicant requests Commission approval of the sale of project lands to the city of Holyoke. The affected canal area is within the city of Holyoke and is bounded by Water Street and Canal Street, between Appleton Street and the Maine Railroad crossing. The grant would allow the city to fill in an abandoned 1.46-acre section of an existing project canal for the purpose of creating a 160-space parking area for employees of local industrial concerns.

Anyone desiring to be heard or to make any protest about his 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 November 20, 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. 78-30133 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ES79-2]

IDAHO POWER CO.

Application

OCTOBER 17, 1978.

Take notice that on October 5, 1979, Idaho Power Co. (Applicant), a corporation organized under the laws of the State of Maine and qualified to transact business in the States of Idaho, Oregon, Nevada and Wyoming, with its principal business office in Boise, Idaho, filed an Application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to $120,000,000 of unsecured promissory notes and commercial paper.

Proceeds from the borrowing will be used in the financing of Applicant's construction expenditures and other corporate purposes. Construction expenditures for the period January 1, 1979 to December 31, 1979, total approximately $157,116,000. The balance of funds required for construction is expected to come from internally generated cash.

Any person desiring to be heard or to make any protest with reference to said Application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 27, 1978. The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30134 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-6]

KANSAS POWER & LIGHT CO.

Proposed Changes in Rates

OCTOBER 17, 1978.

Take notice that on October 5, 1978, the Kansas Power & Light Co. (Kansas) tendered for filing an amendment dated September 7, 1978, with Leavenworth-Jefferson Electric Cooperative, Inc., for wholesale service to that cooperative. Kansas states that this is a supplement to a contract dated September 1, 1973, and designated KPL Rate Schedule FPC No. 157. This amendment will provide for a new delivery point for the cooperative to be known as "New Tonganoxie," the deletion of three delivery points known as Springdale, Oskaloosa, and Tonganoxie, and the change in maximum capacity for the delivery point known as New Oskaloosa. The proposed effective date is September 7, 1978, and Kansas requests that the Commission waive the notice requirements as allowed in § 35.11 of its regulations. According to Kansas, the net billing for the 12 months succeeding the proposed change in agreements is $1,015,362.68. In addition, Kansas states that copies of the agreement have been mailed to Leavenworth-Jefferson Electric Cooperative, Inc., and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1978. Protests will be considered by the Commission in determining the apropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30135 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. RP70-6, et al.]

LAWRENCEBURG GAS TRANSMISION CORP.

Report of Refunds

OCTOBER 18, 1978.

Take notice that on October 10, 1978, Lawrenceburg Gas Transmission Corp. (Lawrenceburg) filed a Report of Refunds, pursuant to article VI of its Stipulation and Agreement at RP70-6, et al., approved by Commission order issued August 25, 1972. Lawrenceburg states that on October 6, 1978, it made gas refunds to its two (2) jurisdictional wholesale customers, Lawrenceburg Gas Co. in the amount of $9,702.07 and the Cincinnati Gas & Electric Co. in the amount of $4,629.83 for a total refund of $14,331.90.

Lawrenceburg states that this refund, applicable to various periods between April 1, 1956, and May 31, 1972, constitutes a flow through of the allocated jurisdictional portion of a refund it received from Texas Gas Transmission Corp. dated September 29, 1978.

Lawrenceburg states that copies of its refund report have been mailed to its two jurisdictional customers and to the two interested State Commissions for the States of Indiana and Ohio.

Any person desiring to be heard or to protest said filing should file a petition to intervene (unless such intervention has previously been granted) or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 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 78-30136 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-533]

MIDWESTERN GAS TRANSMISSION CO.

Petition for Declaratory Order

OCTOBER 13, 1978.

Take notice that on September 21, 1978, Midwestern Gas Transmission Co. (Petitioner), P.O. Box 2511, Houston, Tex. 77001, filed in Docket No. CP78-533 a petition pursuant to § 1.7(c) of the Commission's Rules of Practice and Procedures (18 CFR 1.7(c)) for a declaratory order advising Petitioner, Panhandle Eastern Pipe Line Co. (Panhandle), and Trunkline Gas Co. (Trunkline) that an emergency exchange of natural gas may be rendered pursuant to the terms of § 157.22(a) of the Regulations under the Natural Gas Act, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Petitioner states that it currently sells natural gas for resale in interstate commerce to Central Illinois Light Co. (CILCO) at a delivery point in Vermilion County, Ill., and that CILCO utilized the gas for service for high priority 1 requirements of its customers in Oakwood, Ill.

It is stated that during the 1977-78 winter curtailment period, CILCO, because of unusually cold weather, exceeded its applicable curtailment period quantity entitlement (CPQE), and that for that period Petitioner granted relief to CILCO by providing an additional 9,332 Mcf of natural gas. Petitioner states that it effected repayment of such volume by subtracting the 9,332 Mcf from the CPQE of 24,802 Mcf that would otherwise be assigned to CILCO for the current summer. Thus, pursuant to section XIX of Petitioner's FERC Gas Tariff, Third Revised Volume No. 1, Petitioner has assigned 15,470 Mcf to CILCO as its 1978 summer CPQE, it is asserted. The summer curtailment period ends October 31, 1978, it is said.

Petitioner states that such substantial reduction in summer CPQE creates a severe problem for CILCO in its efforts to meet the priority 1 requirements of its Oakwood customers. Petitioner further states that at CILCO's current summer level of usage, it has estimated that by October 31, 1978, CILCO would have exceeded its summer CPQE by 9,000 Mcf.

It is indicated that in order to meet Petitioner's payback requirements CILCO is seeking to shift some of its gas supply from its Panhandle service territory to its Petitioner service territory. It is stated that this can be accomplished physically by having Panhandle deliver gas as designated by CILCO to Trunkline at existing Panhandle/Trunkline interconnections, by Trunkline delivering equivalent volumes to Petitioner at an existing interconnection near Potomac, Ill., and by Petitioner delivering equivalent volumes of gas to CILCO at Oakwood.

Accordingly, Petitioner, Panhandle, and Trunkline propose to accomplish an exchange and transportation of gas whereby Petitioner would continue to make gas available to CILCO at Oakwood to meet CILCO's requirements there until October 31, 1978. All gas delivered by Petitioner to CILCO at Oakwood during the 1978 summer curtailment period in excess of the volume assigned to CILCO as its summer CPQE would be delivered to CILCO for the account of Panhandle, it is stated. It is indicated that on or about November 10, 1978, when Petitioner would know the precise volume by which CILCO has exceeded its summer CPQE, CILCO's total overrun volume would be delivered by Panhandle to Trunkline, and by Trunkline to Petitioner.

Consequently, Petitioner requests that the Commission issue a declaratory order authorizing it, Panhandle and Trunkline to perform the proposed exchange of natural gas as an emergency delivery of gas pursuant to the terms of § 157.22(a) of the Regulations under the Natural Gas Act.

In considering the petition for declaratory order in the Commission public meeting of October 11, 1978, the Commission decided to treat said petition as an application for a permanent certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act. Accordingly, the subject notice gives notice of said petition and of the intention of the Commission to consider it as an application pursuant to section 7(c) of the Natural Gas Act.

It appears reasonable and consistent with the public interest in this proceeding to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said petition should on or before October 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30124 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-7]

MONTANA POWER CO.

Proposed Cancellation of Rate Schedules

OCTOBER 17, 1978.

Take notice that on October 5, 1978, the Montana Power Co. (Montana) tendered for filing pursuant to section 35.15 of the Commission's regulations a Notice of Cancellation of Rate Schedules FERC Nos. 14, 17, 18, 19, 22, 23, 24, and 26, agreements for service to Beartooth Electric Cooperative, Fergus Electric Cooperative, Hill County Electric Cooperative, McCone County Electric Cooperative, Park Electric Cooperative, Sun River Electric Cooperative, Tongue River Electric Cooperative, and Yellowstone Valley Electric Cooperative (Cooperatives), respectively. Montana states that the Cooperatives no longer take service under individual contracts but are served through Central Montana Generation & Transmission Cooperative, Inc. (Central Montana).

Montana requests that cancellation of Rate Schudules FERC Nos. 14, 17, 18, 19, 22, 23, and 26 be made effective as of July 1, 1974, and Rate Schedules FERC No. 24 be made effective as of September 1, 1975, the date on which service commenced through Central Montana.

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 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30138 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-8]

MONTANA POWER CO.

Proposed Cancellation of Rate Schedules

OCTOBER 17, 1978.

Take notice that on October 5, 1978, the Montana Power Co. (Montana) tendered for filing pursuant to section 35.15 of the Commission's Regulations a Notice of Cancellation of Rate Schedules FERC Nos. 15, 20, 21, and 25, agreements for service to Big Flat Cooperative, Inc., Missoula Electric Cooperative, Inc., Northern Lights, Inc., and Vigilante Electric Cooperative, Inc., respectively. Montana states that these cooperatives no longer purchase wholesale power and energy from it, but are served from other sources.

Montana requests that cancellation of Rate Schedule FERC No. 15 be made effective as of May 1, 1967, and that cancellation of Rate Schedule FERC Nos. 20, 21, and 25 be made effective as of August 1, 1978, the dates on which the sale of wholesale power and energy by Montana was discontinued.

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 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30139 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-8]

MOUNTAIN FUEL SUPPLY CO.

Application

OCTOBER 18, 1978.

Take notice that on October 6, 1978, Mountain Fuel Supply Co. (Mountain Fuel), 180 East First South Street, P.O. Box 11368, Salt Lake City, Utah 84139, filed in docket No. CP79-8 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Mountain Fuel to make a limited term best efforts sale of natural gas to United Gas Pipe Line Co. (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mountain Fuel states that it may have, on a best efforts basis, natural gas which is in excess of its current system requirements and which could be made available to United. It is stated that United has a need for additional supplies of natural gas to help eliminate curtailments on United's system. Therefore, it is said, Mountain Fuel and United signed a Gas Purchase Contract (Contract) dated May 4, 1978, setting forth the details of the sale by Mountain Fuel to United.

Mountain Fuel accordingly requests the issuance of a certificate of public convenience and necessity authorizing the sale of natural gas to United, on a best efforts basis, of up to 50,000 Mcf per day and not to exceed 7,000,000 Mcf per year for a period of three (3) years. Mountain Fuel further requests that the Commission grant permission and approval to abandon the sale at the termination of the Contract.

As stated in the application, Mountain Fuel would deliver all volumes of natural gas purchased by United to Colorado Interstate Gas Co. (CIG) at an existing point of interconnection near Green River, Wyo., located in Sweetwater County, Wyo. Mountain Fuel states that it understands that CIG has or will file with the Commission its application for the authorizations necessary to effectuate the transportation of United's natural gas through CIG's transmission system.

Mountain Fuel states that it proposes to charge United for each Mcf of natural gas purchased at a rate consisting of the following:

(1) The applicable area rate as prescribed by the Commission (currently $1.51 per Mcf) plus all adjustments for new natural gas produced from wells in southwestern Wyoming;

(2) Mountain Fuel would charge United five cents (5¢) per Mcf for compression of the volumes of natural gas delivered to CIG for United's account through the proposed Kanda Exchange Point;

(3) Mountain Fuel would charge United for its cost of service, including return on its investments in gathering and transmission facilities. (The rate to be charged for the cost of service would be fifteen cents (15¢) per Mcf.)

The application states that Mountain Fuel does not propose the construction of any additional transmission facilities to render the best efforts sale to United. Mountain Fuel would utilize the existing point of interconnection with CIG and the facilities proposed in docket No. CP75-37 to render the sale to United.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mountain Fuel to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30137 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP75-141]

NATURAL GAS PIPELINE CO. OF AMERICA

Petition to Amend

OCTOBER 18, 1978.

Take notice that on October 6, 1978, Natural Gas Pipeline Co. of America (Natural), 122 South Michigan Avenue, Chicago, Ill. 60603, filed in Docket No. CP75-141 [1] a petition to amend further the order of February 12, 1975, issued in said docket pursuant to section 7(c) of the Natural Gas Act to include in the certificate of public convenience and necessity authorization to exchange natural gas with Arkansas Louisiana Gas Co. (Arkla) at additional points of delivery, all as more fully set forth in the petition.

The order of February 12, 1975, authorized the exchange of up to 10,000 Mcf of natural gas per day between Natural and Arkla pursuant to an exchange agreement dated July 5, 1974, and the construction and operation of certain facilities located in Washita and Grady Counties, Okla., to make the exchange. Arkla received Commission authorization for its part of the exchange in Docket No. CP75-123. On May 22, 1978, the Commission issued an order amending its order of February 12, 1975, so as to authorize additional points of exchange of gas from the Hickey well in Rogers Mills County, Okla., and the Rogers well in Wheeler County, Tex.

It is stated that Natural has the right to purchase all gas produced by its subsidiary, Napeco Inc., from wells now being drilled and completed, or future wells to be drilled and completed, within certain onshore areas as identified in Docket No. RP73-63. It is further stated that Natural has executed gas purchase contracts with Napeco to purchase gas produced from two wells located in Roger Mills County, Okla. It is said that Arkla also has an interest in the wells and has connected or will connect said wells to its existing pipeline system to complete its purchase.

It is said that Natural hereby proposes to add two new delivery points in Roger Mills County, Okla., where gas delivered for its account would be in a commingled stream with gas volumes purchased from said wells, as set forth in an amendment dated August 3, 1978, to the gas exchange agreement dated July 5, 1974. It is further said that the proposed delivery points would allow Natural to deliver its share of the gas from two wells to Arkla which also is purchasing gas from the wells. Arkla would redeliver equivalent volumes of gas to Natural at the "Arkla Point of Delivery" as defined in the subject gas exchange agreement, as amended, it is said. Natural would not be required to construct any facilities to effectuate said delivery of gas to Arkla, it is stated.

It is stated that the exchange arrangement between Natural and Arkla is mutually beneficial to them in that it provides a means for each party to connect remote sources of gas supply into their respective systems while obviating the necessity to contruct and operate duplicate facilities otherwise required if they were to proceed independently. The exchange would have no effect on any of the other sales or services now rendered by Natural nor would there be any change in operations occasioned thereby, it is asserted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30140 Filed 10-24-78; 8:45 am]

[1] This proceeding was commenced before the FPC. By joint regulation of Oct. 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

[6740-02-M]

[Docket No. ER78-490]

OHIO EDISON CO.

Extension of Time

OCTOBER 17, 1978

On October 3, 1978, Ohio Edison filed a motion for extension of time to submit the testimony and supporting cost data as required by the Commission order of August 16, 1978, in this proceeding. The motion states that the extension is needed because of involvement with another FERC rate proceeding and a hearing before the Ohio PUC. The motion further states that Ohio Power Co. supports the request and that the intervenor Ohio Cities does not oppose it.

Upon consideration, an extension of time is granted to and including November 15, 1978, for Ohio Edison to file the testimony and supporting cost data required by ordering paragraph (D) of the Commission's August 16, 1978, order.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30141 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-10]

OKLAHOMA GAS & ELECTRIC CO.

Proposed Rate Schedule Change

OCTOBER 17,1978.

Take notice that Oklahoma Gas & Electric Co. on October 6, 1978, tendered for filing a letter agreement dated May 25, 1978, between O.G. & E. and Arkansas Power & Light Co. (A.P. & L.) which provides for O.G. & E. to transfer to A.P. & L. 130,000 megawatt-hours of O.G. & E.'s "diversity exchange" entitlement under the TVA-SCEC agreement for the 1978 summer exchange period. O.G. & E. indicates that this entitlement is provided for in the agreement between Tennessee Valley Authority and the Mississippi Power & Light Co. for delivery of the allocated diversity capacity and energy within the South Central Electric Companies' agreement. O.G. & E. states that it desires to transfer the energy and accompanying capacity entitlement and A.P. & L. desires to purchase such entitlement for its system requirements in the summer exchange period.

O.G. & E. requests waiver of the Commission's notice requirements to allow the proposed sale to become effective as of May 28, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with §§ 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 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30142 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-11]

OKLAHOMA GAS & ELECTRIC CO.

Filing

OCTOBER 17, 1978.

Take notice that on October 6, 1978, Oklahoma Gas & Electric Co. (O.G. & E.), Oklahoma City, Okla., tendered for filing a letter agreement dated February 9, 1978, between O.G. & E. and Arkansas Power & Light Co. (A.P. & L.) whereby O.G. & E. sold to A.P. & L. 200,000 kW of power and accompanying energy for the period from February 10, 1978, through March 10, 1978.

O.G. & E. states that the rates contained in the letter agreement include a demand charge of $0.45 per kilowatt per week and an energy charge per kilowatt hour equivalent to company's incremental production cost plus 10 percent. O.G. & E. requested waiver of notice requirements and requested that the agreement be accepted for filing effective February 10, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30143 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Project No. 935 and Project No. 2791]

PACIFIC POWER & LIGHT CO. AND CLARK-COWLITZ JOINT OPERATING AGENCY

Notice Granting Petitions To Intervene and Consolidating Proceedings

OCTOBER 18, 1978.

Pacific Power & Light Co. (PP&L) filed an application on May 5, 1976, for a new, long-term license to continue operating the constructed Merwin Project (No. 935).[1] Notice of the application was issued on August 20, 1976. Intervention was subsequently granted to the Clark-Cowlitz Joint Opreating Agency (CCJOA),[2] the Department of Ecology of the State of Washington, the Washington State Department of Game, the Washington State Department of Fisheries,[3] and the Public Utility Commission of Oregon.[4]

On Sept. 18, 1978, the city of Woodland, Wash. filed a late petition to intervene.[5] On May 23, 1978, P.P. & L. filed an answer, stating that participation of the City would be helpful in resolving land use planning issues.

On February 18, 1977, CCJOA filed a competing application for a new major license to operate the Merwin Project. Notice of the application was issued on May 11, 1978. Petitions to intervene were filed by P.P. & L. on May 22, 1978, Washington State Department of Fishies on July 10, 1978, and Department of Game on July 13, 1978. P.P. & L. states its application (Project No. 935) is the identical project for which it seeks a new license, and that it will oppose CCJOA's application. On July 6, 1978, CCJOA filed an answer, stating P.P. & L. has an interest in the proceeding. CCJOA does not object to the intervention of P.P. & L., but asserts that because it proposes substantially different recreation facilities at the project, the applications are not identical, while recognizing the physical project works involved are the same in Project Nos. 935 and 2791. No objections were filed to the petition of the Department of Fisheries. As the applications are both for a single, long-term license for the same constructed project, and are, therefore, mutally exclusive,[6] further proceedings should be conducted on a consolidated basis.

Pursuant to § 3.5(a) of the Commission's Rules of Practice and Procedure (Rules), 18 CFR § 3.5(a) (as amended): (1) the proceedings on the applications of P.P. & L. and CCJOA for license for the constructed Merwin Project are consolidated; (2) the city of Woodland, Wash., is permetted to intervene in the consolidated proceedings; (3) all parties to the proceeding on application for license for Project No. 935 shall be treated as intervenors in the consolidated proceeding on application for license for Project No. 2791 (except the applicant, CCJOA). These interventions are granting subject to the Rules and Regulations of the Commission. Participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene. Admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any other or orders entered in the proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30144 Filed 10-24-78; 8:45 am]

[1] The existing licence expires on Dec. 11, 1979.

[2] CCJOA is composed of the Public Utility District No. 1 of Clark County, Wash., and Public Utility District No. 1 of Cowlitz County, Wash.

[3] Order issued Dec. 30, 1976.

[4] Order issued Feb. 18, 1977.

[5] The city's petition states it was served on all parties on May 9, 1978.

[6] *Ashbakder Radio Corp.* v. *FCC*, 326 U.S. 327 (1945).

[6740-02-M]

[Docket No. ER79-9]

PUBLIC SERVICE ELECTRIC & GAS CO.

Proposed Tariff Change

OCTOBER 17, 1978.

Take notice that Public Service Electric & Gas Co. of New Jersey, on October 6, 1978, tendered for filing proposed changes in its FERC Electric Service Tariff Nos. 60, 61, and 63. According to the Company, the proposed changes would increase revenues from jurisdictional sales and service by $188,523 based on the 12-month period ending June 30, 1978. In addition, the proposed filing also slightly modified Public Service Electric & Gas Co.'s existing fuel adjustment clause in the above tariff to conform to § 35.14 of the Commission's Regulations.

Public Service states that despite all efforts by it to combat increased costs, the continuing inflationary trend has affected practically all its operations. Due to these increased costs, Public Service states that it has become increasingly difficult for it to provide adequate and reliable service for the growing needs of its customers. The Company also contends that the rate increases are necessary to assure continued confidence in its financial integrity to provide earnings which will attract additional capital at reasonable cost to enable the Company to finance its electrical construction program.

Copies of the filing were served upon the public utility's jurisdictional customers, the Boroughs of Milltown, South River, Park Ridge, and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 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 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file

with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30145 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-11]

SOUTHERN NATURAL GAS CO.

Application

OCTOBER 18, 1978.

Take notice that on October 6, 1978, Southern Natural Gas Co. (Applicant), P.O. Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP79-11 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 13.947 miles of 16-inch pipeline which pipeline would loop Applicant's existing 12-inch Breton Island-Olga pipeline, Plaquemines Parish, offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the proposed 16-inch line would run from a point on its existing 14-inch Breton Sound pipeline in Block 45 through Blocks 46, 47, 48, 49, 36 and Main Pass Area Block 49 to Applicant's existing Olga Compressor Station. Applicant further states that the proposed pipeline is necessary to allow Applicant to transport the gas currently committed to it from Breton Sound Area Blocks 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 45 and from Main Pass Block 21. It is indicated that Applicant presently must transport all gas available to it from the Breton Sound Area through its 12-inch Breton Island-Olga pipeline which has a capacity of 125,000 Mcf per day, and that the capacity is no longer adequate to transport proven reserves committed to Applicant. As a result of new contracts for additional gas reserves with Kerr-McGee Corp., Phillips Petroleum Co. and Terra Resources, Inc., as well as production in the area exceeding Applicant's original estimates, gas available to Applicant from proven reserves presently exceeds pipeline capacity by over 55,000 Mcf per day, it is stated. Applicant asserts that even without considering probable and possible reserves, the limited capacity of the existing pipeline would prevent it from transporting substantial volumes of natural gas per day available to it in July 1979 when the proposed loop line should be completed. The proposed loop lines would enable Applicant to transport additional volumes of gas committed to it to serve better Applicant's customer, it is said.

It is indicated that the estimated cost of the proposed pipeline is $5,102,750. Applicant states that it expects initial financing by short-term financing which would be repaid from cash from current operations and from permanent financing.

Applicant states that the new facilities would be operated as integral parts of its present system and would not result in expansion of Applicant's sales or service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30146 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-94]

TEXAS GAS TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 18, 1978.

Take notice that on September 29, 1978, Texas Gas Transmission Corp. (Texas Gas) tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. The proposed changes would increase revenues from jurisdictional sales and services by approximately $92,607,000 based on the 12-month period ending June 30, 1978, as adjusted, compared with the rates proposed to be effective in Docket No. RP77-139 on August 1, 1978.

Texas Gas states that the increase costs are attributable to (1) increases in operating expenses; (2) increase in rate base and related costs; and (3) increase in rate of return and related taxes.

Texas Gas requests an effective date of November 1, 1978, for the proposed Revised Sheets. Texas Gas further states that it served copies of this filing upon 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 §§ 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 30, 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. 78-30147 Filed 10-24-78; 8:45 am]

[6740-02-M]

Docket Nos. RP73-3 (PGA78-3); RP73-3 (PGA76-1a); RP73-3 (PGA76-2); RP73-69, RP72-99 (EPGA76-3); RP73-3, et al. (PGA77-3a); RP72-99, RP75-75 (EPGA 76-1) and RP72—99, RP75-75 (EPGA 76-2)

TRANSCONTINENTAL GAS PIPE LINE CO.

Order on Rehearing Modifying Prior Order and Denying Stay Request as Moot

OCTOBER 16, 1978.

On August 31, 1978, the Federal Energy Regulatory Commission (Commission) issued an order in this docket Accepting for Filing and Suspending Proposed PGA Rate Increase, Initiating Hearing, and Consolidating Proceedings. In that order the Commission required Transcontinental Gas Pipe Line Corp. (Transco) to file tariff sheets eliminating from its PGA filing the costs of emergency purchase gas volumes not delivered to Transco during the 6 month accrual period for the deferred account surcharge. For the reasons set forth below, we shall grant in part and deny in part Transco's application for rehearing.

Transco argues that the Commission improperly disallowed certain emergency purchase costs incurred prior to the 6 months determination period used to calculate the revised surcharge proposed by Transco to become effective September 1, 1978. Transco argues that certain of these costs were emergency purchases made pursuant to the Emergency National Gas Act, [ENGA] of 1977 and they are not subject to disallowance by the Commission. Transco cites, among other things, the FERC's order in *Mississippi River Transmission Corporation*, order issued April 24, 1978, in Docket No. RP72-149 (PGA77-10) as support for this argument. Transco requests an opportunity at the hearing to prove these contentions.

Transco also argues that the Commission should give Transco an opportunity at the hearing scheduled in this docket to support its argument that the other non-ENGA emergency purchases not placed in the deferred account during the 6 month determination period used to calculate the latest surcharge adjustment should be collected through the current surcharge.

The Commission finds that the issues raised by Transco cited above should be developed in the hearing ordered in this docket. Accordingly, we shall amend our August 31, 1978, order to provide that Transco may collect the "out of period" emergency costs as of September 2, 1978, subject to refund, pending completion of the proceeding initiated by our August 31, 1978, order. In that proceeding, Transco should show which of the "out of period costs" reflect costs of purchases made under the ENGA of 1977. Also, Transco should demonstrate legal and "good cause" support for its request to collect these "out of period" ENGA costs under the applicable orders of the ENGA Administrator, the *Mississippi River* order, and any other applicable bases for the relief requested. Furthermore, Transco should show that on a legal and on a "good cause" Basis, it should be permitted to collect its "out of period" non-ENGA emergency costs in its current surcharge adjustment. To the extent any of those non-ENGA emergency purchases were made at rates in excess of the applicable just and reasonable producer rate levels prescribed in this Commission's Regulations, Transco will also be required to demonstrate the prudency of the rates paid for such purchases.

Transco also argues that five of the dockets [1] should be severed from this proceeding because Transco has already filed data in support of the prudency of the emergency purchases at issue in those dockets and that Staff, by pleading filed with the FPC on August 26, 1976, in Docket No. RP73-3 et al., has already indicated that it agrees with Transco that the emergency purchases at issue in those dockets were prudent. Transco argues further that no useful purchase will be served by setting this matter for hearing.

As indicated in Staff's August 26, 1976, comments in the five subject dockets, Transco filed comments in support of the prudency of the emergency purchases on the dates listed in the Appendix to Staff's comments. Pursuant to Staff's request, supplemental information was received. Staff's comments indicated that the emergency purchases were made at rates which a reasonably prudent pipeline purchaser would pay for gas under the same or similar circumstances. Therefore Staff recommended that the purchases be approved, and that the proceedings with respect to such purchases be terminated.

Upon review of that information and Staff's August 26, 1976, filed comments, the Commission agrees that the emergency purchases contained therein are prudent. Accordingly, the Commission shall sever those five dockets from this proceeding and terminate the proceedings in those dockets insofar as they involve emergency purchases. To the extent there are not amounts subject to refund in those dockets involving other unresolved issues, the refund obligation of Transco in those dockets shall be terminated.

Since this order grants the relief requested by Transco, Transco's motion for stay shall be denied as being moot.

Consistent with the determinations made in this order, Transco's Substitute Ninth Revised Sheet No. 12 and Substitute Revised Sheet No. 15, which were filed on September 15, 1978, and which reflect the rates proposed in Transco's August 1, 1978, filing are adjusted to exclude the "out of period" costs at issue in this proceeding, shall be accepted for filing and made effective as of September 1, 1978, subject to any refund obligation in other unresolved Transco rate cases. In addition, Transco's Substitute Tenth Revised Sheet No. 12 and Substitute Ninth Revised Sheet No. 15, which were also filed on September 15, 1978, and which reflect all of the proposed costs in Transco's August 1, 1978, filing, shall be made effective September 2, 1978, subject to refund pending resolution of this proceeding.

The Commission orders:

(A) The August 31, 1978, order is modified to extent discussed in the body of the order, and in Ordering Paragraph (B) below.

(B) The proceedings in Docket Nos. RP73-3 (PGA76-1a); RP73-3 (PGA76-2); RP73-69, RP72-99 (EPGA76-3); RP72-99, RP75-75 (EPGA76-1); and RP72-99, RP75-75 (EPGA76-2) are terminated insofar as they involve the prudency of 60 day emergency purchases. To the extent there are not amounts subject to refund in those dockets involving other unresolved issues, the refund obligations in those dockets are hereby terminated.

(C) Transco's Substitute Ninth Revised Sheet No. 12 and Substitute Revised Sheet No. 15, which were filed on September 15, 1978, are accepted for filing and made effective as of September 1, 1978, subject to any refund obligations in any other unresolved Transco rate proceedings.

(D) Transco's Substitute Tenth Revised Sheet No. 12 and Substitute Ninth Revised Sheet No. 15 filed on September 15, 1978, shall become effective as of September 2, 1978, subject to refund pending resolution of this proceeding.

(E) To the extent not granted in this order, Transco's application for rehearing is denied.

(F) Transco's motion for stay of the Commission's August 31, 1978, order is denied because it is now moot as a result of the action taken in the instant order.

(G) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30127 Filed 10-24-78; 8:45 am]

[1] RP73-3 (PGA76-1a); RP73-3 (PGA76-2); RP73-69, RP72-99, RP75-75 (EPGA76-1); and RP72-99, RP75-75 (EPGA76-2).

[6740-02-M]

[Docket No. CP79-3]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND MICHIGAN WISCONSIN PIPE LINE CO.

Application

OCTOBER 18, 1978.

Take notice that on October 3, 1978, Transcontinental Gas Pipe Line Corp. (Transco), P.O. Box 1396, Houston, Tex. 77001 and Michigan Wisconsin Pipe Line Co. (Mich Wisc), One Woodward Avenue, Detroit, Mich. 48226, (Applicants) filed in Docket No. CP79-3 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to transport and exchange natural gas under the terms of an agreement dated September 8, 1978 (Agreement), all as more fully set forth in the application which is on file with the commission and open to public inspection.

It is stated that the Agreement provides that Mich Wisc would take receipt of gas to be purchased by Transco in the Mayfield West Field, Beckham County, Okla. and redeliver thermally equivalent quantities to Transco at designated points of redelivery. It is further said that Transco would make deliveries of such gas to Mich Wisc at the well heads or well head separators, and Mich Wisc would construct the gathering facilities necessary to connect the wells in the Mayfield West Field to the Mich Wisc system in Oklahoma. It is said that the redelivery points under the Agreement are: (1) The tailgate of Mobil Oil Corp.'s Cameron Meadows Processing Plant in Cameron Parish, La., (2) a point of interconnection between the pipeline systems of Mich Wisc and Transco located near Eunice, Acadia Parish, La., and (3) such other redelivery points as may be established by mutual consent of the parties.

It is stated that Mich Wisc expects to control certain gas reserves in Jefferson Davis, Covington and other counties in Mississippi. It is further said that the Agreement provides that Transco would take receipt of all gas Mich Wisc would deliver to Transco at a point in Covington County, Miss. It is said that Transco would redeliver thermally equivalent exchange volumes to Mich Wisc at the above-designated points of redelivery. It is stated that to the extent that the volumes of gas Transco would receive in Mississippi are in excess of the volumes which Mich Wisc would receive in Oklahoma, Transco agrees to transport such excess volumes, by displacement, to Mich Wisc and redeliver such transportation volumes to Mich Wisc at the points of redelivery.

Applicants also request authority to add, from time to time, additional points where Transco may receive Mich Wisc's gas in Mississippi, other than the point described above.

To compensate Mich Wisc for providing the gathering service for Transco's gas supplies in the Mayfield West Field, as described above, it is said that Transco would pay Mich Wisc 9.9 cents per Mcf delivered by Transco to Mich Wisc in such field. Transco would charge Mich Wisc 3.5 cents per Mcf for all excess volumes which it transports.

It is stated that the term of the Agreement would be for a primary term of 15 years from the date of first deliveries by Transco to Mich Wisc in the Mayfield West Field.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426 a petition to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in an subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30148 Filed 10-24-78; 8:15 am]

[6740-02-M]

[Docket No. CP79-10]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

OCTOBER 18, 1978.

Take notice that on October 6, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP79-10 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 1,775 dekatherms (dt) equivalent of natural gas on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to transport up to 1,775 dt equivalent per day on an interruptible basis for the account of Carolina Pipeline Co.; NCNG Exploration Corp., an affiliate of North Carolina Natural Gas Corp.; Philadelphia Electric Co.; Piedmont Exploration Co., Inc., an affiliate of Piedmont Natural Gas Co., Inc.; Tar Heel Energy Corp., an affiliate of Public Service Co. of North Carolina, Inc.; Owens-Corning Fiberglas Corp.; UCG Energy Corp., an affiliate of United Cities Gas Co., North and South Carolina Divisions; Rockingham Exploration Co., and affiliate of North Carolina Gas Service Division of Pennsylvania & Southern Gas Co.; Burlington Industries, Inc.; and Devco Enterprises, Inc., and affiliate of Cherokee Brick Co. of North Carolina, Inc., all of which Applicant maintains are existing customers of Applicant, affiliates of such customers, customers of Applicant's distribution customers, or their affiliates. Applicant states that the proposed transportation service would be rendered for such transportation customers, who have joined the Transmac Exploration and Development Program (Transmac), a joint venture exploration and development program formed to finance the search for and development of new natural gas reserves in onshore areas, and in non-Federal waters, in the Gulf Coast region, which received temporary authorization by order of December 21, 1977 in Docket No. CP77-421. Applicant further states that the transportation customers' participation in the Transmac joint venture entitles them to a proportionate working interest in the production in successful discoveries. It is stated that such a discovery has been developed in the State Tract 889-S Field, Mustang Island Area, offshore Nueces County, Tex., and Applicant proposes to transport such customers' interests in the discovery to existing points of delivery to its distributors and to its

direct industrial customer, Owens-Corning Fiberglas Corp.

The gas would be delivered by the producers to the Lovera Pipeline Co. (Lovera) for delivery to United Gas Pipe Line Co. (United) in Nueces County, Tex., it is said. United would then transport and deliver the gas to Applicant at an existing point of connection between their two systems, it is stated. Applicant further states that it would construct 1.12 miles of 4-inch pipeline to connect Lovera's facilities with United's existing 12-inch pipeline pursuant to Applicants' budget-type certificate.

Applicant states that it would initially charge 23.5 cents and 24 cents per dt equivalent for transportation service into its Rate Zones 2 and 3, respectively. Also, Applicant states that it would initially withhold 3.8 percent and 4.4 percent of the transportation volumes destined for delivery in its Rate Zones 2 and 3, respectively, for compressor fuel and line loss make-up.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commisssion on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30149 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-12]

TUCSON GAS & ELECTRIC CO.

Proposed Interconnection Agreement

OCTOBER 17, 1978.

Take notice that on October 6, 1978, Tucson Gas & Electric Co (Tucson), tendered for filing an interconnection agreement between it an Tri-State Generation & Transmission Association, Inc. (Tri-State) dated September 1, 1978. Tucson states that the primary purpose of this interconnection agreement is to provide for the exchange of capacity and energy between the electric systems of the parties.

Tucson states that services may be provided under three Service Schedules:

1. Service Schedule A—Emergency Assistance.
2. Service Schedule B—Economy Energy Interchange.
3. Service Schedule C—Banked Energy.

Tucson requests an effective date of September 1, 1978, for this interconnection agreement with a term that shall remain in force until and unless canceled upon thirty (30) days notice by either party.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions and protests should be filed on or before October 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30150 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER77-311]

UTAH POWER & LIGHT CO.

Further Extension of Time

OCTOBER 12, 1978.

On October 3, 1978 Lincoln Service Corp. filed a motion for a further extension of time for the filing of briefs on exceptions to the initial decision issued in this proceeding on June 12, 1978.

Three earlier requests by the same party have been granted, the last extension being until October 2, 1978. The motion states the previous extensions was sought because Utah was to file additional rate data with the Commission which would enable Lincoln to determine whether the dispute between it and Utah is moot. This data has still not been filed and Lincoln seeks a further extension. The motion states that Utah does not oppose the motion.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 2, 1978 for the filing of briefs on exceptions. Briefs opposing exceptions are due on or before November 22, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30151 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-13]

WASHINGTON WATER POWER CO.

Filing

OCTOBER 18, 1978.

Take notice that on October 10, 1978, the Washington Power Co. (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as "Storage Agreement" between Washington and the San Diego Gas & Electric Co. (San Diego). Washington states that this "Storage Agreement" would apply to the delivery of energy to San Diego which could be stored for Washington's future requirements.

Washington further states that the purchase of this energy by San Diego is dependent on such energy being found at some future date to be surplus to Washington's requirements. Washington indicates that the rate at which such energy is purchased by San Diego is 12 mills per kilowatthour computed in accordance with the formula rate specified in Washington's tariff, FPC No. 88. Washington further indicates that if the energy is not surplus to Washington's requirements, San Diego will return such energy under the provisions outlined in the Agreement.

Washington proposes an effective date of September 14, 1978, and therefore requests waiver of the Commission's notice requirements.

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 30, 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. 78-30152 Filed 10-24-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-12]

WESTERN TRANSMISSION CORP.

Application

OCTOBER 18, 1978.

Take notice that on October 10, 1978, Western Transmission Corp. (Applicant), 2700 Fidelity Union Tower, Dallas, Tex. 75201, filed in Docket No. CP79-12 an application pursuant to section 7(c) of the Natural Gas Act and section 157.7(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing on the date of the order granting the requested authorization, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed gas purchase facilities would not exceed $500,000 with the cost of no single project to exceed $125,000, which costs Applicant would finance from cash on hand and from cash generated from normal internal sources and from short-term bank loans and other short-term borrowings utilized in the normal operation of Applicant's total business.

Applicant recognizes that the proposed budget-type authorization for the construction of gas-purchase facilities has an estimated total cost and estimated single project cost in excess of the amounts specified in subparagraph (1) (i) and (ii) of section 157.7(b) of the Commission's Regulations. Consequently, pursuant to subparagraph (2) of section 157.7(b) of the Commission's Regulations, Applicant requests waiver of the cost limitations so as to allow for a total project cost and estimated single project cost in excess of the amount specified in subparagraph (1) (i) and (ii). Applicant states that the purpose of the budget-type authorization cannot be served in its situation by an authorization limited to a total of $150,000 and $37,500 for each project. Applicant asserts that its cost of laying 4-inch pipe, which includes right-of-way, surface damage, material costs, transportation costs and construction costs is approximately $40,000 per mile, and that under a budget-type authority of $37,500 per project, it can lay less than 5,000 feet of pipe to connect new supplies of natural gas; whereas, with the proposed authority of $125,000 per project, it could lay up to 16,500 feet of pipe.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30153 Filed 10-24-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 993-7]

NATIONAL DRINKING WATER ADVISORY COUNCIL

Open Meeting

Under section 10(a)(2) of Pub. L. 92-423, the Federal Advisory Committee Act, notice is hereby given that a meeting of the National Drinking Water Advisory Council established under Pub. L. 93-523, the Safe Drinking Water Act, will be held at 9 a.m. on November 30, 1978 and at 8:30 a.m., December 1, 1978, at the Torresdale Water Treatment Plant, 9001 State Road, Philadelphia, Pa.

The purpose of the meeting will be to observe the operation of a drinking water treatment plant including the pilot testing of granular activated carbon treatment facilities for the removal of organic contaminants. Other issues to be discussed will include regional water supply programs, and the sharing of information on the implementation of the safe drinking water program in a nonprimacy State.

Both days of the meeting will be open to the public. The Council encourages the hearing of selected outside statements and will allocate a portion of the meeting time for public participation. Any outside parties interested in presenting an oral statement should petition the Council in writing. The petition should include the general topic of the proposed statement and the petitioner's telephone number.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at Council meetings.

Any member of the public wishing to attend the Council meeting, present a oral statement, or submit a written

statement should contact Patrick Tobin, Executive Secretary for the National Drinking Water Advisory Council, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Directions to the Torresdale Water Treatment Plant can be obtained by contacting the Executive Secretary at 202-426-8877 or the Philadelphia Water Department at 215-686-3801.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

OCTOBER 17, 1978.

[FR Doc. 78-29973 Filed 10-24-78; 8:45 am]

[6560-01-M]

[FRL 993-6; PP 6G1862, 7G1903, and 8G2020/T170]

PESTICIDE PROGRAMS

Establishment of Temporary Tolerances

Monsanto Agricultural Products Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166, submitted three pesticide petitions (PP 6G1862, 7G1903, and 8G2020), to the Environmental Protection Agency (EPA). These petitions requested that temporary tolerances be established for combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodities pome fruits (PP 6G1862), fresh alfalfa, alfalfa hay (PP 7G1903), and avocados (PP 8G2020) at 0.2 part per million (ppm) and the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.5 ppm (PP 7G1903).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with experimental use permits that have been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental use. A nitrosamine compound, which is a suspect carcinogen, appears in the formulations as an impurity. However, no residues of the compound are present at detectable levels in the raw agricultural commodities. Thus, it was determined that the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permits.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental uses that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

Residues not in excess of 0.2 ppm remaining in or on pome fruits, fresh alfalfa, alfalfa hay, and avocados and 0.05 ppm remaining in the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permits and temporary tolerances. These temporary tolerances may be revoked if the experimental use permits are revoked or if any scientific data or experience with these pesticides indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-426-2632.

(Sec. 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).)

Dated: October 18, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-29974 Filed 10-24-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 994-3]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these funtions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to § 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: The 45-day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30-day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from October 9, 1978 through October 13, 1978; the date of submission of comments on draft EIS's as computed from October 20, 1978 is December 4, 1978.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: October 20, 1978.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Landmark Planning Unit, Boise National Forest, Ada County, Idaho, October 11: Proposed are 10 alternatives and a selected plan for the Landmark Planning Unit located in the Boise National Forest, Ada County, Idaho. Under the proposed plan, timber harvest would be phased in at optimum rates of 5 million board feet per year for a 10-year period. The planning unit would be divided into seven management areas. Some features of the alternatives considered are: (1) Timber harvest, (2) sediment levels, (3) wilderness study areas, (4) wildlife habitat values, and (5) recreation development. (USDA-FS-R4-DES(ADM)-R4-78-10). (EPA Order No. 81105.)

Malheur National Forest, 10-year timber resource plan, several counties, Oregon, October 12: Proposed is a 10-year timber resource management plan for 1,540,423-acre Malheur National Forest located in Grant, Harney, Baker, and Malheur Counties, Oreg. The preferred alternative is an intensive management plan which will include: (1) A current level cut of 203.3 million board feet; (2) prompt reforestation; (3) stocking level control; (4) release of all plantations from other vegetative competitions; (5) construction of an average of 72 miles of road annually; and (6) other management features. (DES-06-04-78-16). (EPA Order No. 81113.)

Burnt Powder Planning Unit, Wallowa-Whitman National Forest, several counties, Oregon, October 12: Proposed is a land Management plan for the Burnt Powder Planning Unit located in the Wallowa-Whitman National Forest in the Counties of Baker, Grant, Malheur, and Union, Oreg. The proposal will cover 670,778 acres of na-

tional forest lands. The preferred alternative includes management or maintenance of: (1) Wood fiber production, (2) big game winter area and habitat, (3) scenic and recreation characteristics, (4) municipal watershed values, (5) wilderness, (6) undeveloped forest characteristics, and (7) other features. (USDA-FS-R6-DES(ADM)-78-17). (EPA Order No. 81114.)

Final

Bear Lake Planning Unit, Caribou National Forest Bear Lake, Franklin, and Caribou Counties, Idaho, October 13: The purpose of the proposed plan is to determine what the long range land management direction should be for the Bear River Planning Unit located in the Caribou National Forest, Bear Lake, Franklin and Caribou Counties, Idaho. Many issues will be raised in this study to address possible conflicts including: (1) Recreation v. water quality and wildlife; (2) timber harvest v. roadless areas, local economy; (3) grazing v. local economy, wildlife, aquatic environment (fish); (4) transportation v. water quality; (5) private land development v. resource management. The Bear Lake Planning Unit contains 343,289 acres of national forest lands, State and private lands. (FS-R4-78-4.) Comments made by: DOI, USDA, EPA, DOE, State agencies, groups, individuals, and business. (EPA Order No. 81116.)

Beartooth Face Unit Plan, Montana, Wyoming, several counties, Montana and Wyoming, October 11: Proposed are the selection and implementation of a land management plan for the 239,680 acre Beartooth Face Planning Unit: Custer, Mont., Gallatin Mont., and Shoshone, Wyo., National Forests. Park County, Wyo., contains 10,934 acres of the planning unit and the remainder is in Carbon, Stillwater, Sweet Grass, and Park Counties, Mont. Five alternate plans are presently being considered. The preferred plan proposes to use both surface and subsurface resources, but to the extent possible, development would be balanced with protection of existing soil., air, water, visual, recreation, and wildlife values. (USDA-FS-ADM-FES-01-08-77-11.) Comments made by: DOI, DOE, EPA, USDA, State and local agencies, groups, individuals, and businesses. (EPA Order No. 81102.)

RURAL ELECTRIFICATION ADMINISTRATION

Final

Black Fox Station Unis 1 and 2, guaranteed loan, Rodgers County, Okla. October 12: This statement concerns the use of REA guaranteed loan funds by Western Farmers Electric Cooperative, of Anadarko, Okla. and Associated Electric Cooperative, Inc., to finance a 39.13 percent undivided ownership interest in units 1 and 2 of the Black Fox Station, Rodgers County, Okla., consisting of two boiling water reactors. Steam turbine generators would use this heat to provide 1,150 megawatts of electrical power capacity per unit. (USDA-REA-EIS-ADM-78-4-F.) Comments made by: USDA, EPA, DOI, State agencies, groups and individuals. (EPA Order No. 81110.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Atn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Draft

Manatee Harbor, Channel maintenance, Manatee County, Fla., October 12: Proposed is the maintenance of Manatee Harbor and Channel; the construction of a widened turning area at the intersection of the channel with the main Tampa Harbor Channel; and construction of a turning basin adjacent to the Port Manatee berthing area. part of an existing 60 acre island will be modified to form about 7 acres at about 2 feet mean low water to mitigate the loss of an equal area of sea-grassed bay bottom consequent to turning basin construction. The project will involve 164 acres for material fill area and is entirely located in Manatee County, Fla. (Jacksonville district). (EPA Order No. 81111.)

Large unnamed creek, Loves Park, Winnebago County, Ill., October 10: Proposed is a flood prevention plan for large unnamed creek in Loves Park, Winnebago County, Ill. The recommended plan consists of 15,500 L.F. of concrete and 2,400 L.F. of riprap channel improvements; use of 66 acres of existing gravel pits for ponding purposes with installation of a pumping station and a gravity outlet; removal of nine bridges; and construction of four new bridges. Alternatives include: (1) No action, (2) nonstructural solutions of flood plain evacuation, flood proofing, and flood insurance; and (3) structural measures of channel improvements, underground conduits, and reservoirs (Rock Island District). (EPA Order No. 81100.)

Final

Navigation season extension demonstration, fiscal year 1979: October 13: The proposed fiscal year 1979 navigation season extension demonstration program is part of an on-going investigation to demonstrate the practicability of certain enabling measures for extending the commercial navigation season on the Great Lakes-St. Lawrence Seaway system. This proposal covers only the demonstration of various methods needed to extend the navigation season and is not an environmental statement for the extension of the winter navigation season (Detroit District). Comments made by: DOI, DOT, USCG, USDA, FERC, DOE, DOC, EPA, State and local agencies, and groups. (EPA Order No. 81122.)

Final supplement

Channel/levee improvement, east fork Trinity River, Kaufman County, Tex., October 11: This supplemental statement updates information on the environmental statement relative to the increment I portion of the east fork channel and levee improvement of the authorized project, Lavon Reservoir enlargement and east fork channel and levee improvement. The final EIS for Lavon Dam and Reservoir modification and east fork channel improvement was filed with CEQ on March 29, 1971, and is considered inadequate by current standards. An updated EIS on the Lavon Dam and Reservoir was filed with CEQ on July 23, 1976. This proposal will improve channel and utilized excavated material to raise and strengthen associated levees to protect agricultural lands (Fort Worth District). Comments made by: EPA, USDA, DOT, DOI, HEW, DOE, State and local agencies, groups, and businesses. (EPA Order No. 81103.)

DEPARTMENT OF ENERGY

Contact: Mr. Robert Stern, Office of NEPA Affairs, Department of Energy, 1200 Pennsylvania Avenue NW., Room 7119, Washington, D.C. 20461. 202-566-9760.

Draft

Coal conversion program, Brayton Point, Bristol County, Mass., October 13: Proposed is a notice of effectiveness to prohibit burning of gas or oil as the primary source of fuel at New England Power Co.'s Brayton Point generating station, Somerset, Bristol County, Mass., for units 1, 2, and 3. The notice of effectiveness would make effective the June 30, 1977, Energy Supply and Environmental Coordination Act prohibition order issued by FEA. The alternatives considered include: (1) Fuel mix, (2) alternate fuels, (3) early retirement, (4) no action. (DOE/EIS-0036-D.) (EPA Order No. 81123.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Ms. Alexandria Smith, Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Wash. 98101, 206-399-5810.

Final

Sinclair inlet wastewater facilities, Kitsap County, Wash., October 11: Proposed is a sewerage facilities plan designed to provide a wastewater treatment and disposal system for the Sinclair inlet water resource inventory area No. 15 within Kitsap County, Wash. This statement identifies alternatives for providing wastewater facilities designed to meet residential and industrial needs as well as the maintenance of environmental quality. The study area covers approximately 100 square miles and has a population of 69,300. The majority of which is concentrated in the city of Bremerton (EPA-91019-77-047). Comments made by: AHP, COE, DOC, USDA, HUD, DOT, USN, DOI, State agencies, groups, individuals, and businesses. (EPA Order No. 81106.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-577-0405.

Final

Courthouse, Federal office building, Springfield, Hampden County, Mass., October 10: Proposed is the construction of a new courthouse and Federal office building in Springfield, Hampden County, Mass., by the General Services Administration. The proposed building will be multistory of reinforced concrete and/or structural steel frame. Interior parking will be provided for about 100 vehicles. The principal tenants in the building will be U.S. courts and related activity offices; the Departments of Treasury, HEW, Defense, and Veterans Administration. Space will be provided for other Federal agencies also. The proposed new building will be approximately 50,000 square feet to be acquired in the downtown area of Springfield. The facility will house about 372 employees. Comments made by: COE, DOC, EPA, HEW, HUD, DOI, DOT, NEA, SBA, State and local agencies, and businesses. (EPA Order No. 81099.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Toa Alta Heights development, Toa Alta, P.R., October 13: Proposed is the issuance of HUD home mortgage insurance for development of two sections of the Toa Alta Heights development, Toa Alta, P.R. The two sections involved, when completed, will provide 1,729 dwelling units and will involve 198.61 acres of land. Development will include both single and multifamily units, and community facilities. (EPA Order No. 81118.)

Final

Colony Creek Village, subdivision, Harris County, Tex., October 11: The proposed action is for the Department of Housing and Urban Development to accept for HUD-FHA mortgage insurance purposes, the proposed Colony Creek Village subdivision which is located in northwestern Harris County, Tex., about 20 miles northwest of downtown Houston. The 181.73 acre site is north of and adjacent to Louetta Road. When completed in 5 years, the subdivision will contain approximately 818 single family homes plus recreational facilities to serve the subdivision (HUD-RO6-EIS-78-34-F). Comments made by: USDA, COE, EPA, DOI, DOT, HUD, State and local agencies. (EPA Order No. 81107.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Coal resources development, south central Wyoming, several counties, Wyoming and Colorado, October 13: Proposed are three coal mining and reclamation plans and the issuance of rights-of-way necessary to develop coal mines in Sweetwater and Carbon Counties, Wyo. and in Routt and Moffat Counties, Colo. Right-of-way will be used for ancillary facilities related to the project, including: (1) Telephone, power, and two transmission lines; (2) one access and one haul road; (3) a water pipeline and tailing pond; and (4) a State highway. Surface ownership of these lands includes Federal, State, and private. (DES-78-44.) (EPA Order No. 81119.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Gretna Fish Hatchery Road, Louisville West, Sarpy County, Nebr., October 11: Proposed are two projects involving the improvement of approximately 11 miles of N-31 in Sarpy County, Nebr. The Gretna Fish Hatchery Road Project involves reconstruction of approximately 5 miles of N-31 from the south ramps of Gretna I-80 to the Schram Park area. The roadway will be a two-lane surfaced highway; will include two new bridges; and will involve relocation in the Schram Park area. The Louisville West project will involve construction of 6 miles of two-lane surfaced highway from the end of Gretna Fish Hatchery Road to the junction of N-31 and N-50 (FHWA-NEB-EIS-78-04-D). (EP A Order No. 81108.)

Final

I-10, 91st Avenue to the junction I-10, Phoenix, Maricopa County, Ariz., October 13: Proposed is the construction of a multilane, directionally-divided, controlled access highway facility for the purpose of connecting I-10 in the Phoenix Metropolitan Area of Maricopa County, Ariz. The proposed section would be a 15-mile, six- or eight-lane freeway extending east from 91st Avenue to the Maricopa Freeway near 20th Street. The I-10 route would follow a corridor approximately one-quarter mile south of McDowell Road from 91st Avenue east to the vicinity of 20th Street and then south to connect with Maricopa Freeway (FHWA-AZ-EIS-76-1-F). Comments made by: DOT, DOI, EPA, HUD, AHP, COE, State and local agencies, groups, individuals, and businesses. (EPA Order No. 81124.)

Kuakini Highway realignment, Hawaii County, Hawaii, October 13: The proposed Kuakini Highway realignment project, FAP Route 11, is located in the North Kona District on the island and county of Hawaii, State of Hawaii. The project is 3.1 miles long, beginning at the intersection of Queen Kaahumanu Highway and Palani Road, and will terminate at the existing Kuakini Highway near the Kealakowaa Heiau. Project implementation will adversely affect the Great Wall of Kuakini and Kona Field system. An unspecified number of displacements will also result (FHWA-HI-EIS-76-01-F). Comments made by: DOI, DOC, AHP, HUD, EPA, HEW, DOT, USDA, State and local agencies, groups, and businesses. (EPA Order No. 81121.)

Dawson/McDowell/Cabarrus Streets—U.S. 70-401, Wake County, N.C., October 11: The proposed action is the improvement of traffic service in the south central portion of the Raleigh, N.C., urban area. The 3.4-mile project extends from the intersection of Dawson and McDowell Streets with Cabarrus Street south to U.S. 70-401, and between Saunders Street on the west and Wilmington Street on the east. Three alternatives are proposed to alleviate the existing traffic congestion and to accommodate traffic demand to the year 2000. Adverse impacts include increased noise and carbon monoxide levels, stream modification, and residential and business dislocation. (FHWA-NC-EIS-76-05-F). Comments made by: USDA, HEW, HUD, COE, EPA, DOT, DOI, State and local agencies, groups, and businesses. (EPA Order No. 81104.)

WA-90 junction WA-5 to vicinity junction WA-405, King County, Wash., October 13: proposed is the construction of an eight-lane interstate freeway (WA-90), extending from junction WA-5 to vicinity junction WA-405. Project length is 6.9 miles. Adverse effects include displacement of residences and businesses, the elimination of native vegetation, and the destruction of a small amount of wildlife. A 4(F) statement is included in reference to Sturgas Park, Judkins Playground and Luther Burbank Park (FHWA-EIS-75-05-F). Comments made by: USDA, DOC, DOD, COE, HEW, HUD, DOI, DOT, EPA, State and local agencies, groups, individuals, and businesses. (EPA Order No. 81120.)

Draft supplement

The Appalachian highway, GA-5, Gilmer County, Ga., October 13: This statement supplements a final EIS filed in April 1978, concerning construction of the Appalachian Highway in Georgia. The statement proposes new alignments for two sections on GA-5, of four-lane, class 1, rural free access highway in Gilmer County. The first section will be approximately 0.6 mile and will extend from 3 miles north of the Pickens/Gilmer County line to a point approximately 3.5 miles north of that line. The second section, a distance of 1.8 miles, extending from 4 miles north of the Ellijay city limits to a point approximately 6 miles south of the Gilmer/Fannin County line (FHWA-GA-EIS-77-04-DS-2). (EPA Order No. 81115.)

OFFICIAL RETRACTION

It has come to EPA's attention that the following EIS was not distributed to the public at the same time the official filing was made by the originating Agency. Therefore, notice of availability is hereby republished. The official 30-day review period allocated to final EIS will hereby begin on the date stated below.

Contact: George R. Alexander, Jr., Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2000.

Final

Detroit water pollution control systems, Wayne, Oakland, and Macomb Counties, Mich., October 12: The proposed action involves Federal financial assistance for the upgrading and expansion of an existing regional wastewater treatment plant in the city of Detroit, Mich. The plant capacity would be expanded to treat an average daily flow of 600 MG with a 48-hour sustained peak flow of 1050 MGD. The plan also includes expansion of the associate collection system. Operation, maintenance, financial and management improvement changes will be incorporated as well as modifications to existing contracts and ordinances (EPA region 5). Comments made by: DOI, DOT, DOC, HEW, State and local agency, groups, individuals, and businesses. (EPA Order No. 81051.)

[FR Doc. 78-30188 Filed 10-24-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1146]

PETITIONS FOR RECONSIDERATION OF ACTIONS IN RULEMAKING PROCEEDINGS FILED

OCTOBER 20, 1978.

Docket or RM No.	Rule No.	Subject	Date received
RM-3030	Sec. 73.202(b)	Request amendment FM Table of Assignments to reassign channel 289 from Catonsville, Md. to Baltimore, Md.	
		Filed by Lauren A. Colby, Attorney for Key Broadcasting Corp. (WKTK-FM).	Oct. 12, 1978.
20735		Changes in the rules relating to noncommercial educational FM Broadcast Stations.	
		Filed by Robert I. Freedman, Attorney for Intercollegiate Broadcasting System, Inc.	Oct. 5, 1978.
		Filed by William J. Byrnes and Ilene R. Price, Attorneys for Westchester Community College, (WARY-FM).	Oct. 6, 1978.
		Filed by Sheldon Elliot Steinbach, Attorney for American Council on Education and Christine Young Topping, Attorney for National Association of Independent Colleges and Universities.	Oct. 12, 1978.

NOTE.—Oppositions to petitions for reconsideration must be filed within 15 days after publication of this public notice in the FEDERAL REGISTER. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-30094 Filed 10-24-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Docket No. 78-41]

TRAILER MARINE TRANSPORT CORP.—PROPOSED REDUCED AND INITIAL THROUGH RATES AND PROVISIONS BETWEEN U.S. ATLANTIC AND GULF PORTS IN THE U.S. VIRGIN ISLANDS

Order of Investigation

Trailer Marine Transport Corp. (TMT) hs established a new through service in the Atlantic-Gulf Coast/Virgin Islands trade. Governing rates and provisions for this new service have been published in its Tariff FMC-F No. 2, which also apply between U.S. Atlantic and Gulf ports as named and ports in Puerto Rico, and become effective on various dates, the earliest of which is October 15, 1978. The new rate sections establish two separate columns of trailerload minimum weight rates stated in cents per hundred pounds. One column sets forth the rates for trailers not exceeding 20 feet, and the second sets forth the rates for trailers exceeding 20 feet.

International Marine Transport Serv- ices, Inc. (IMTS), filed a formal protest against TMT's proposed new provisions on August 10, 1978. IMTS asks that the proposed amendments be suspended and placed under investigation because they violate section 3 of the Intercoastal Shipping Act, 1933, and sections 16 First and 18(a) of the Shipping Act, 1916.

IMTS states that the new rates are offered by TMT through its wholly owned affiliate or subsidiary, Interisland Intermodal Lines, Inc. (IIL), and involve selected major moving commodities carried by IMTS and essential to its survival. IMTS contends that the high minimum weight applied regardless of trailer size makes it obvious that the proposed through rates are geared to attract high density cargo. IMTS argues that the rates for the smaller trailers are drastically lower than those applied to larger trailers; accordingly, they are neither just nor reasonable and are obviously noncompensatory.

A reply to protest was filed September 12, 1978. According to TMT, IMTS is under the misconception that TMT and IMTS are the only competitors in the United States/Virgin Islands trade. The proposed through rates are designed to be competitive with Tropical Shipping and Construction Co., Ltd. (TSC), a carrier operating ships between Florida ports and the U.S. Virgin Islands. TMT states that two 20-foot trailers occupy a 40-foot slot on the vessel and thus the revenue derived is compensatory.

We do not believe that a suspension of the proposed through rates for a new service which, although lower than the existing combination of local rates, only meet the level of a competing through service, is dictated in this instance.

TSC is the only carrier publishing through rates for this service and upon entering a new trade area any carrier obviously would meet the rates of its competition. To enter a new trade area with a rate level higher than the dominant carrier would leave the new carrier in a noncompetitive position to attract cargo.

While suspension of the proposed changes does not appear to be warranted, conditions surrounding the filed publications would appear to necessitate investigation.

It is our understanding that virtually all of the cargo in the Altantic Gulf Coast/Virgin Islands trade is presently moving in 20-foot containers. It appears unlikely that this will change even though TMT has published rates which apply to cargo moving in containers exceeding 20 feet. These rates are considerably higher than TMT's rates which apply to containers not exceeding 20 feet. It would seem that no carefully shipper would utilize the higher rate structure. Assuming this to be the case, TMT's rate structure, that is based on containers not exceeding 20 feet should be designed to recover TMT's total costs.

We are instituting this proceeding in part to determine if there are any circumstances under which shippers would be required to accept a 40-foot container with its attendant higher rates. More importantly, we believe that the TMT's rates applying to containers not exceeding 20 feet should be investigated to insure that they are designed to recover total costs attributable to the carriage of this cargo.

It is the Commission's intention to expeditiouly resolve the issues in this proceeding. An expedited procedure is herein ordered to enable the Commission to adhere to deadlines imposed by H.R. 6503 to the extent practicable. The procedural schedule set forth in H.R. 6503 has been extend by 60 days in order to allow TMT, Hearing Counsel and any intervenors to prepare their direct cases.[1]

[1] In order to adhere strictly to the procedural timetable imposed by H.R. 6503 it will

Footnotes continued on next page

TMT will be required to furnish to Hearing Counsel and any intervenors exhibits and direct testimony in support of the rate changes. Hearing Counsel and any intervenors will be required to file at a later date comparable information supporting their positions. Parties will provide each other with access to underlying material to their exhibits and statements unless the Administrative Law Judge directs for good cause shown that access to specific materials need not be granted. It is anticipated that this will obviate the need for lengthy discovery. After the parties exchange their direct testimony and underlying material, the Administrative Law Judge will convene a prehearing conference at which the parties will discuss issues, attempt to reach stipulations or settlements and submit recommendations identifying all unresolved issues and specifying the type of procedure best suited to resolve them. After consideration of these recommendations, the Administrative Law Judge will issue on appropriate Order limiting the issues and establishing the procedure for their resolution. To the extent possible, evidentiary hearings, if such are necessary, shall be held in one continuous session and shall be completed and the record closed no later than February 20, 1979. The Initial Decision of the Administrative Law Judge shall be submitted in writing to the Commission on or before April 23, 1979, and the Commission will serve the final decision in this proceeding on or before June 25, 1979.

Now, therefore, *it is ordered*, That pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916 (46 U.S.C. 817, 821) and section 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845a), an expedited investigation is hereby instituted into the lawfulness of the tariff matters listed in Appendix A for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, that Trailer Marine Transport Corp. be named Respondent in this proceeding;

It is further ordered, that this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge.

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that Respondent serve Hearing Counsel and any intervenors with all exhibits and statements of direct testimony in support of the rate changes together with underlying material no later than November 22, 1978;

It is further ordered, that Hearing Counsel and any intervenors serve Respondent with all exhibits and statements of direct testimony in support of their positions together with underlying material no later than December 22, 1978;

It is further ordered, that upon service of their direct testimony, parties will provide each other with access to underlying materials unless the Administrative Law Judge directs for good cause shown that access to specific materials need not be granted;

It is further ordered, that the parties submit to the Administrative Law Judge, at a prehearing conference, recommendations identifying all unresolved issues and specifying the type of procedure best suited to resolve them. After consideration of these recommendations, the Administrative Law Judge will issue an appropriate order limiting the issues and establishing the procedure for their resolution;

It is further ordered, that copies of this Order shall be filed with the appropriate tariff schedules in the Bureau of Compliance of the Federal Maritime Commission;

It is further ordered, that during the pendency of this investigation, TMT will serve the Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

It is further ordered, that (1) a copy of this Order be forthwith served upon the Respondent and upon the Commission's Bureau of Hearing Counsel and published in the FEDERAL REGISTER, and (2) the Respondent and Hearing Counsel be duly served with notice of time and place of hearing.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene herein should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72) with a copy to all parties to the proceeding.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

APPENDIX A.—*Tariff FMC-F No. 2*

Page No.	Issued	Effective
Fourth revised p. 5	July 17, 1978	Oct. 15, 1978
Third revised p. 18	July 17, 1976	Do.
Second revised p. 40	July 17, 1978	Do.
Second revised p. 50	do	Do.
Second revised p. 51	do	Do.
First revised p. 78-A	Aug. 3, 1978	Do.
First revised p. 78-B	do	Do.
First revised p. 78-C	do	Do.
Original pp. 176 through 187	July 17, 1978	Do.
Third revised p. 50	Sept. 11, 1978	Oct. 16, 1978
Second revised p. 78-A	do	Do.
Second revised p. 78-C	do	Do.
First revised p. 184	do	Do.
First revised p. 186	do	Do.
Third revised p. 78-A	Sept. 27, 1978	Oct. 30, 1978
Third revised p. 78-C	do	Do.
Second revised p. 184	do	Do.

[FR Doc. 70-30052 Filed 10-24-78; 8:45 am]

[6325-01-M]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

CANCELLATION OF MEETING

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463) notice was published in 43 FR 41437 on September 18, 1978, that meetings of the Federal Prevailing Rate Advisory Committee would be held on October 5, October 12, and October 26, 1978. Notice is hereby given that the meeting scheduled for October 26 has been cancelled.

JEROME H. ROSS,
Chairman, Federal Prevailing Rate Advisory Committee.

OCTOBER 24, 1978.

[FR Doc. 78-30352 Filed 10-24-78; 8:45 am]

Footnotes continued from last page

be necessary, in future proceedings, for the carrier to submit its written direct case (including underlying documents) concurrently with the rate increase. Complainants (including Hearing Counsel) will be required to submit their respective written direct cases (including underlying documents) on or shortly after the proposed effective date of the rates. The Commission's Rules of Practice and Procedure will be amended accordingly, but since the prescriptions of H.R. 6503 were not effective when the rates herein were filed, i.e., the written direct case of the carrier was not filed contemporaneously with the rate, the procedures outlined in this Order have been adjusted accordingly.

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Program Liaison Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, sec. 10(a)(2)).

DATES: November 15, 1978, 9 a.m. to 10 p.m.; November 16, 1978, 9 a.m. to 2:30 p.m.

ADDRESS: Tucson Marriott Hotel, 180 West Broadway, Tucson, Ariz. 85701.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th Street NW., Washington, D.C. 20004, 202-376-8892.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee shall be open to the public.

The proposed agenda includes:

Reauthorization legislation.
Committee budget.
Council brochure and annual report.
December forums.
Community school legislation.
Tucson adult and community education visitation.
Liaison contact groups.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, Room 323, Pennsylvania Building, 425 13th Street NW., Washington, D.C. 20004.

Signed at Washington, D.C., on October 19, 1978.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc. 78-29978 Filed 10-24-78; 8:45 am]

[4110-08-M]

National Institutes of Health

AGING REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on December 4, 5, 1978, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Md.

The meeting will be open to the public from 9 a.m. to 10 a.m. on December 4, for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 4, from 10 a.m. to adjournment on December 5, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Suzanna H. Porter, Committee Management Officer, NIA, Building 31, Room 5C07, National Institutes of Health, Bethesda, Md., Area Code 301, 496-5345, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health.)

Dated: October 17, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer National Institutes of Health.

[FR Doc. 78-30070 Filed 10-24-78; 8:45 am]

[4110-08-M]

ANIMAL RESOURCES REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, November 9-10, 1978, at the Zoo Hospital of the San Diego Zoological Society, San Diego, Calif. 92112.

The meeting will be open to the public on November 9 from 8:30 a.m. to 12 noon, during which time there will be a brief staff presentation on the current status of the Animal Resources Program, and on November 10 from 9 to 12 noon, during which time there will be a program demonstration. The Committee will select future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 9 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B13, Building 31, National Institutes of Health, Bethesda, Md. 20014, 301-496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Dennis O. Johnsen, Executive Secretary of the Animal Resources Review Committee, Room 5B55, Building 31, National Institutes of Health, Bethesda, Md. 20014, 301-496-5175, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.306, National Institutes of Health.)

Dated: October 17, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc 78-30064 Filed 10-24-78; 8:45 am]

[4110-08-M]

BOARD OF SCIENTIFIC COUNSELORS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, November 1, and 2,

1978, in Building 5, Room 216, and on November 3, 1978, in Building 31, Room 7A24, National Institutes of Health, Bethesda, Md.

This meeting will be open to the public on November 1 and 2 from 9 a.m. until recess. During this open session, the permanent staff of the Laboratory of Viral Diseases, the Laboratory of Streptococcal Diseases, and the DNA Recombinant Unit will present and discuss their immediate, past, and present research activities.

In accordance with the provisions set forth in Sections 552b(c)(6), Title 5, United States Code, and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on November 3 from 9 a.m. to adjournment from the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, and the competence of individual investigators.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Md., telephone 301-496-5717, will provide summaries of the meetings and rosters of the Board member.

Dr. Kenneth W. Sell, Executive Secretary, Board of Scientific Counselors, NIAID, NIH, Building 5, Room 137, telephone 301-496-2144, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health.)

Dated: October 18, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30071 Filed 10-24-78; 8:45 am]

[4110-08-M]

BOARD OF SCIENTIFIC COUNSELORS, NIEHS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, December 5, 6, and 7, 1978, Building 18 Conference Room, National Institute of Environmental Health Sciences, Research Triangle Park, N.C.

This meeting will be open to the public from 9 a.m. to 4 p.m. on December 5 and 6, for the purpose of discussing recent developments in the Institute's budget, personnel, permanent facilities, contracts, scientific programs, and plans of the Laboratory of Environmental Biophysics, Laboratory of Behavioral and Neurological Toxicology, and the Inhalation Toxicology Section, Environmental Biology and Chemistry Branch. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) title 5, United States Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9 a.m. to adjournment on December 7 for the evaluation of the program of the Laboratory of Environmental Biophysics, Laboratory of Behavioral and Neurological Toxicology, and the Inhalation Toxicology Section, Environmental Biology and Chemistry Branch, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Acting Executive Secretary, Dr. David G. Hoel, Acting Scientific Director, National Institute of Environmental Health Sciences, Research Triangle Park, N.C. 27709, telephone 919-541-3205, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: October 18, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30072 Filed 10-24-78; 8:45 am]

[4110-08-M]

CANCER RESEARCH MANPOWER REVIEW COMMITTEE

Renewal

The Director, National Institutes of Health, announces the renewal on October 13, 1978, of the Cancer Research Manpower Review Committee, under the authority of section 410A(a) of the Public Health Service Act (42 U.S.C. 286e). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI, and the Director, Division of Cancer Research Resources and Centers, advice concerning review for merit of National Research Service Fellowship Awards. The committee will terminate October 13, 1980, unless renewed by appropriate action as authorized by law.

Dated: October 17, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30065 Filed 10-24-78; 8:45 am]

[4110-08-M]

CLINICAL TRIALS REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, November 26-27, 1978, at the Holiday Inn of Bethesda, 8120 Wisconsin Avenue, Bethesda, Md.

This meeting will be open to the public from 8 p.m. to 8:30 p.m. on November 26, 1978, to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 26, 1978 from 8:30 p.m. to adjournment, and on November 27, 1978 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of two individual grant applications. These applications and the discussion could reveal personal information concerning individuals associated with these applications.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, National Institutes of Health, Building 31, Room 5A-03, phone 301-496-4236, will provide summaries of the meeting and rosters of the committee members. Dr. Fred P. Heydrick, Chief, Research Contracts Review Section, Division of Extramural Affairs, NHLBI, Westwood Building, Room 548B, phone 301-496-7363, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health.)

Dated: October 17, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30069 Filed 10-24-78; 8:45 am]

[4110-08-M]

GENERAL RESEARCH SUPPORT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the

General Research Support Review Committee, Division of Research Resources, November 16-17, 1978, from 9 a.m. to 5 p.m. in Building 31, Conference Room 9, National Institutes of Health, Bethesda, Md. 20014.

This meeting will be open to the public from 9 a.m. to 1:30 p.m. on November 16, 1978, to discuss administrative matters relating to the programs. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 16, 1978, from 1:30 p.m. to 5 p.m., and on November 17, 1978, from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications submitted on the Minority Biomedical Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Md. 20014, telephone 301-496-5545, will provide summaries of meetings and rosters of committee members.

Dr. Sidney A. McNairy, Jr., Executive Secretary of the General Research Support Review Committee, Building 31, Room 5B33, Bethesda, Md. 20014, telephone 301-496-6743 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.375, National Institutes of Health.)

Dated: October 17, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30063 Filed 10-24-78; 8:45 am]

[4110-08-M]

HEART, LUNG, AND BLOOD RESEARCH REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, November 30, Maryland Room, Bethesda Holiday Inn, and December 1, 2, 1978, National Institutes of Health Building 31, Wing C, Conference Room 7, Bethesda, Md.

This meeting will be open to the public on November 30, 1978, from 7:30 p.m. to approximately 11 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 1, 1978 from 8:30 a.m. until the adjournment for the review, discussion and evaluation of individual grant applicatons. These applicatons and the discussions could reveal personal information concerning individuals associated with the applications.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Room 5A03, Building 31, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of the meeting and rosters of the committee members. Dr. Arthur W. Merrick, Executive Secretary, NHLBI, NIH, Room 552, Westwood Building, Bethesda, Md. 20014, phone 301-496-7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, 13.838, National Institutes of Health.)

Dated: October 17, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30067 Filed 10-24-78; 8:45 am]

[4110-08-M]

HEART, LUNG, AND BLOOD RESEARCH REVIEW COMMITTEE B

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, November 30, 1978, Maryland Room, Bethesda Holiday Inn, and December 1, 1978, Conference Room 9, Building 31, National Institutes of Health, Bethesda, Md.

This meeting will be open to the public on November 30, 1978 from 7:30 p.m. to approximately 11 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 1, 1978 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Room 5A03, Building 31, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of the meeting and rosters of the committee members. Dr. Henry G. Roscoe, Executive Secretary, NHLBI, NIH, Room 554, Westwood Building, Bethesda, Md. 20014, phone 301-496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, 13.838, 13.839, National Institutes of Health.)

Dated: October 17, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30068 Filed 10-24-78; 8:45 am]

[4110-08-M]

NATIONAL CANCER ADVISORY BOARD AND THE PRESIDENT'S CANCER PANEL

Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Director, National Institutes of Health, announces the renewal of the following committees:

Committee	*Termination Date*
National Cancer Advisory Board	July 27, 1980.
President's Cancer Panel	July 27, 1980.

Authority for these committees will expire on the dates indicated, unless renewed by appropriate action as authorized by law.

Dated: October 11, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30066 Filed 10-24-78; 8:45 am]

[4110-08-M]

RECOMBINANT DNA ADVISORY COMMITTEE

Renewal

The Director, National Institutes of Health, announces the renewal on June 30, 1978, of the Recombinant

DNA Advisory Committee, under the Authority of section 222 of the Public Health Service Act (42 U.S. Code 217a). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

Authority for the above committee will expire on June 30, 1980, unless the Secretary formally determines that continuance is in the public interest.

Dated: October 11, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30062 Filed 10-24-78; 8:45 am]

[4110-08-M]

SUBCOMMITTEE ON ENVIRONMENTAL MUTAGENESIS OF THE DHEW COMMITTEE TO COORDINATE TOXICOLOGY AND RELATED PROGRAMS

Report

A report of the Subcommittee on Environmental Mutagenesis entitled "Approaches to Determining the Mutagenic Properties of Chemicals: Risk to Future Generations" was published in the Journal of Environmental Pathology and Toxicology 1: 301-352, 1977.

Notice is hereby given that reprints of the published report are available from:

Ms. Ronda Rice, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709.

The purpose of this report is to review existing techniques to determine the mutagenic properties of various chemicals and to explore the present state of the art of mutagenic testing.

Dated: October 14, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30074 Filed 10-24-78; 8:45 am]

[4110-08-M]

SUBCOMMITTEE ON INHALATION TOXICOLOGY OF THE DHEW COMMITTEE TO COORDINATE TOXICOLOGY AND RELATED PROGRAMS

Report

The report of the Subcommittee on Inhalation Toxicology was published in the Journal of Environmental Pathology and Toxicology 1: 353-381, 1977.

Notice is hereby given that reprints of the published report are available from:

Ms. Ronda Rice, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709.

Based on an in-depth analysis of an 85 percent response to 81 letters of inquiry to academic institutions, government agencies and private organizations on the national needs in inhalation toxicology, it was concluded that:

1. Facilities for inhalation toxicology are not currently the major problem,

2. Manpower shortage is the most significant obstacle to expansion of needed programs, and

3. Methods development is essentially being ignored in favor of fundamental research on mechanisms and screening/testing programs.

The Subcommittee recommended that:

1. The Federal Government should stimulate and support an accelerated program to train inhalation toxicologists,

2. Government agencies should take the lead role in assuring methods development and protocol improvement for more efficient and effective safety assessment,

3. The private sector should conduct much of the screening/testing programs, and

4. A survey with periodic updating should be conducted by the Federal Government and a facilities roster of inhalation laboratories should be maintained.

Dated: October 14, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30073 Filed 10-24-78; 8:45 am]

[4110-85-M]

Public Health Service

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Notice is hereby given, pursuant to 42 CFR § 110.605, that in the month of August 1978, the following entities have been determined to be qualified health maintenance organizations (HMO's) under section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)).

In addition, revised service areas are announced at the end of the list with respect to three previously qualified HMO's.

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

NAME, ADDRESS, SERVICE AREA, AND DATE OF QUALIFICATION

(Operational Qualified Health Maintenance Organizations: 42 CFR § 110.603(a))

1. Matthew Thornton Health Plan, Inc. (Staff Model, see sec. 1310(b)(1) of the Public Health Service Act), 591 West Hollis Street, Nashua, N.H. 03060. Service area: Communities of: Nashua, Amherst, Brookline, Hollos, Hudson, Litchfield, Londonderry, Lyndeboro, Mason, Merrimack, Milford, Mont Vernon, Pelham, Wilton, and Windham, N.H. Date of qualification: August 15, 1978.

2. Prepaid Health Care, Inc. (Staff Model, see sec. 1310(b)(1) of the Public Health Service Act), 1417 South Belcher Road, Clearwater, Fla. 33516. Service area: Pinellas County, Fla. Date of qualification: August 3, 1978. (Achieved preoperational qualification on Aug. 2, 1978.)

(Transitionally Qualified Health Maintenance Organizations: 42 CFR § 110.603(b))

3. Arizona Health Plan, Inc. (Medical Group Model, see sec. 1310(b)(1) of the Public Health Service Act), 4811 North Seventh Street, Phoenix, Ariz. 85014. Service area: Maricopa County and the unincorporated area of Pinal County, known as Apache Junction. Date of qualification: August 24, 1978.

4. ABC-HMO, Inc. (Medical Group Model, see sec. 1310(b)(1) of the Public Health Service Act), 4747 North 22d Street, Phoenix, Ariz. 85016. Service area: Maricopa County and the unincorporated area of Pinal County known as Apache Junction. Date of qualification: August 3, 1978.

(Preoperational Qualified Health Maintenance Organization: 42 CFR § 110.603(c))

5. The Health Care Plan, Inc. (Staff Model, see sec. 1310(b)(1) of the Public Health Service Act), 664 Ellicott Square Building, Buffalo, N.Y. 14203. Service area: Erie County, N.Y. Date of qualification: August 31, 1978.

The following HMO's were determined to have been operationally qualified in the month of April:

1. Crossroads Health Plan (Individual Practice Association, see sec. 1310(b)(2)(A) of the Public Health Service Act), 141 South Harrison Street, East Orange, N.J. (city of Newark to be included beginning Nov. 1, 1978). Date of qualification: April 1, 1978. (Achieved preoperational qualification on Mar. 17, 1978 (43 FR 20560).)

2. Health Maintenance Organization of Baton Rouge, Inc. (Medical Group Model, see sec. 1310(b)(1) of the Public Health Service Act), 9151 Interline Avenue, Baton Rouge, La. 70609. Service area: Parishes of Ascension, East Baton Rouge, Livingston, and West Baton Rouge, La. Date of qualification: April 3, 1978. (Achieved preoperational qualification on Mar. 13, 1978 (43 FR 20560).)

Revised Service Areas

Service areas listed in the annual cumulative list of qualified HMO's and published on April 7, 1978, in the FEDERAL REGISTER (43 FR 14908-13) are revised as follows:

1. Family Health Services, Inc., d.b.a General Medical Centers Health Plan, 300 South Park, Pomona, Calif. 91766. Service area:

Change from: Eastern Los Angeles County known as the San Gabriel and Pomona Valley area and the western part of San Bernardino County. All of this area lies within a 7-mile radius of a GMCHP medical office. The ZIP codes encompassed by the service area are as follows:

Los Angeles County:

90601	91723	91765
90602	91724	91766
90606	91731	91767
90660	91732	91768
91006	91733	91770
91010	91740	91773
91016	91744	91780
91702	91745	91789
91706	91746	91790
91711	91748	91791
91722	91750	91792

San Bernardino County:

91701	91762	
91710	91763	
91730	91764	
91761	91786	

Change to:

Los Angeles County:

90022*	90706*	91711
90023*	90712*	91722
90031*	90713*	91723
90032*	90715*	91724
90033*	90716*	91731
90040*	90723*	91732
90058*	90803*	91733
90063*	90804*	91740
90201*	90805*	91744
90221*	90806*	91745
90240*	90807*	91746
90241*	90808*	91748
90242*	90814*	91750
90255*	90815*	91754*
90262*	90840*	91765
90270*	91001*	91766
90280*	91006	91767
90601	91010	91768
90602	91016	91770
90603*	91024*	91773
90604*	91030	91775*
90605*	91101*	91776*
90606	91104*	91780
90638*	91105*	91789
90640*	91106*	91790
90650*	91107*	91791
90660	91108*	91792
90670*	91702	91801*
90701*	91706	91803*

San Bernardino County:

91701	91762	
91710	91763	
91730	91764	
91739*	91786	
91743*	92335*	
91761		

Riverside County*:

91720	92503	
91752	92504	
91760	92505	
92370	92506	
92501	92509	

Orange County*:

90620	92643	92701
90621	92644	92703
90623	92645	92704
90630	92646	92705
90631	92647	92706
90680	92648	92707
90720	92649	92708
90740	92655	92709
90742	92660	92710
90743	92665	92714
92621	92666	92715
92626	92667	92801
92627	92668	92802
92631	92669	92804
92632	92670	92805
92633	92676	92806
92635	92680	92807
92640	92683	
92641	92686	

Date of Qualification: Transitionally qualified—December 14, 1976.

2. Health Service Plan of Pennsylvania, 917 Schaff Building, 1505 Race Street, Philadelphia, Pa. 19102. Service area:

Change from: Philadelphia, Delaware, Montgomery, Bucks, Chester Counties, Pa.

Change to: ZIP codes in the States of:

New Jersey:

08002	08043	08093
08003	08046	08101
08007	08049	08102
08008	08052	08103
08009	08057	08104
08012	08065	08105
08021	08066	08106
08029	08075	08107
08030	08078	08108
08033	08083	08109
08034	08084	08110
08035	08091	

Pennsylvania:

18914	19067	19138
18925	19070	19139
18940	19072	19140
18954	19073	19141
18966	19074	19142
18974	19075	19143
18976	19076	19144
19001	19077	19145
19002	19078	19146
19003	19079	19147
19004	19081	19148
19006	19082	19149
19007	19083	19150
19008	19084	19151
19009	19085	19152
19010	19086	19153
19012	19087	19154
19013	19089	19174
19014	19090	19301
19015	19094	19312
19016	19095	19317
19017	19096	19319
19018	19101	19331
19020	19102	19333
19022	19103	19335
19023	19104	19341
19025	19105	19342
19026	19106	19345
19028	19107	19355
19029	19108	19357
19030	19109	19366
19031	19110	19373
19032	19111	19377
19033	19112	19380
19034	19113	19395
19035	19114	19401
19036	19115	19403
19037	19116	19405
19038	19117	19406
19039	19118	19407
19040	19119	19408
19041	19120	19409
19043	19121	19422
19044	19122	19425
19046	19123	19426
19047	19124	19428
19050	19125	19432
19052	19126	19444
19054	19127	19452
19055	19128	19454
19056	19129	19460
19057	19130	19462
19058	19131	19468
19060	19132	19477
19061	19133	19479
19063	19134	19481
19064	19135	19486
19065	19136	
19066	19137	

Date of Qualification: Operationally qualified—April 26, 1976.

3. HMO Illinois, Inc., 233 North Michigan Avenue, Suite 1323, Chicago, Ill. 60601. Service area:

Change from: ZIP codes as follows:

46303	46323	46402
46307	46324	46404
46311	46326	46406
46312	46327	46407
46319	46342	46408
46320	46373	46409
46321	46375	46410
46322	46394	
60004	60304	60603
60005	60305	60604
60007	60401	60605
60008	60402	60606
60010	60406	60607
60015	60409	60608
60016	60411	60609
60018	60415	60610
60022	60417	60611
60025	60419	60612
60026	60422	60613
60029	60423	60614
60043	60425	60615
60053	60426	60616
60056	60429	60617
60062	60430	60618
60067	60432	60619
60068	60438	60620
60069	60439	60621
60070	60441	60622
60076	60442	60623
60082	60443	60624
60090	60445	60625
60091	60448	60626
60093	60449	60627
60101	60451	60628
60103	60452	60629
60104	60453	60630
60106	60455	60631
60108	60456	60632
60120	60457	60633
60126	60458	60634
60130	60459	60635
60131	60461	60636
60137	60462	60637
60141	60463	60638
60143	60464	60639
60148	60465	60640
60153	60466	60641
60157	60468	60642
60160	60469	60643
60162	60471	60644
60163	60472	60645
60164	60473	60646
60165	60475	60647
60170	60476	60648
60171	60477	60649
60172	60480	60650
60176	60482	60651
60181	60501	60652
60185	60513	60653
60187	60514	60654
60191	60515	60655
60193	60521	60656
60194	60525	60657
60195	60534	60658
60201	60546	60659
60202	60558	60660
60203	60559	60666
60301	60601	
60302	60602	

Change to: Peoria, Tazewell, Fulton, Woodford Counties, Ill., and ZIP codes as follows:

46303	46323	46402
46307	46324	46404
46311	46326	46406
46312	46327	46407
46319	46342	46408
46320	46373	46409
46321	46375	46410
46322	46394	

60004	60302	60559
60005	60304	60601
60007	60305	60602
60008	60401	60603
60010	60402	60604
60015	60406	60605
60016	60409	60606
60018	60411	60607
60022	60415	60608
60025	60417	60609
60026	60419	60610
60029	60422	60611
60035*	60423	60612
60043	60425	60613
60053	60426	60614
60056	60429	60615
60062	60430	60616
60067	60432	60617
60068	60438	60618
60069	60439	60619
60070	60441	60620
60076	60442	60621
60082	60443	60622
60090	60445	60623
60091	60448	60624
60093	60449	60625
60101	60451	60626
60103	60452	60627
60104	60453	60628
60106	60455	60629
60108	60456	60630
60120	60457	60631
60126	60458	60632
60130	60459	60633
60131	60461	60634
60137	60462	60635
60141	60463	60636
60143	60464	60637
60148	60465	60638
60153	60466	60639
60157	60468	60640
60160	60469	60641
60162	60471	60642
60163	60472	60643
60164	60473	60644
60165	60475	60645
60170	60476	60646
60171	60477	60647
60172	60480	60648
60176	60482	60649
60181	60501	60650
60184*	60513	60651
60185	60514	60652
60187	60515	60653
60191	60521	60654
60193	60525	60655
60194	60534	60656
60195	60540*	60657
60201	60544*	60658
60202	60546	60659
60203	60555*	60660
60301	60558	60666

Date of qualification: Transitionally qualified—June 15, 1977 (inadvertently listed as operationally qualified—42 FR 38649-50).

* Added ZIP codes.

Files containing detailed information regarding qualified HMO's will be available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, Third Floor, Rockville, Md. 20857.

Questions about the review process or requests for information about qualified HMO's should be sent to the same office.

Dated: October 19, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

[FR Doc. 78-29963 Filed 10-24-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

LIST OF RESTRICTED JOINT BIDDERS

Pursuant to the authority vested in the Director of the Bureau of Land Management by the provisions of 43 CFR 3302.3-2(a), the following companies shall be restricted from bidding jointly with any other company on this same list at Outer Continental Shelf oil and gas lease sales held during the bidding period of November 1, 1978, through April 30, 1979. BP Alaska Exploration Inc. and Sohio Natural Resources Co. are listed together as one Restricted Joint Bidder, and they may bid with each other, but not with any other company on this list.

Amoco Production Co.
BP Alaska Exploration Inc., and Sohio Natural Resources Co.
Chevron U.S.A. Inc.
Exxon Corp.
Gulf Oil Corp.
Mobil Oil Corp.
Shell Oil Co.
Standard Oil Co. of California
Texaco, Inc.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

[FR Doc. 78-30097 Filed 10-24-78; 8:45 am]

[4310-84-M]

UTAH

Wilderness Aspects; Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the following public meetings will be held to discuss wilderness aspects of roadless areas of 5,000 acres or more that would be crossed by proposed electrical transmission, railroad and pipeline routes for the proposed Intermountain Power Project: Delat—November 14, at 7:30 p.m. in the Delta High School auditorium; Cedar City—November 15, at 7:30 p.m. in the BLM Cedar City district office, 1579 North Main Street; Castle Dale—November 16, at 7:30 p.m. in the Emery County Courthouse; Salt Lake City—November 17, at 7 p.m. in room 1408 of the University Club Building, 136 East South Temple.

The meetings are being held to gain public input for evaluating wilderness aspects of the areas. Information gain from public input and wilderness inventories will be discussed in the draft environmental statement now being prepared by BLM on the proposed power project.

Public comments on the wilderness aspects of the areas will be accepted until December 18. Comments should be mailed to: BLM Utah State Director, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT:

Mr. Don Baxa, BLM Utah State Office, Salt Lake City, 801-524-4229.

Dated: October 16, 1978.

PAUL L. HOWARD,
State Director.

[FR Doc. 78-30099 Filed 10-24-78; 8:45 am]

[4310-31-M]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Int DES 78-46]

DEVELOPMENT OF COAL RESOURCES, CENTRAL UTAH

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft regional environmental impact statement on proposed coal development and associated activities in central Utah. The draft statement concerns a broad area of central Utah and includes the Book Cliffs, Wasatch Plateau, Salina Canyon, the western part of the Sego coal field, the Emery coal fields in east-central Utah, and the communities associated with these fields. The environmental statement is development is developed in two parts: An analysis of the cumulative impacts that would result from projected coal development in the region, and analyses of impacts that would result from specific mining and reclamation plans.

The major analysis in the cumulative statement is based on a projected regional coal production of 24 million tons per year (mty) by the year 1990. This includes full production from ten proposed mines and would supply the peak demand requirements of the proposed Intermountain Power project. Alternative production scenarios of 19 mty and 42 mty by 1990 are presented to to provide a basis for evaluating areas of environmental concern or impact sensitivity at lower and higher production levels. Seven applicants have submitted mining and reclamation plans for 10 proposed mines on existing leases in central Utah. The mines and applicants are the Deadman Canyon mine of AMCA Coal Leasing Inc., Skumpah Canyon mine of the Energy Reserves Group Inc., Mountain States No. 1 mine of the Mountain States Resources Co., Fish Creek and Dugout Canyon mines of the Pacific Gas and Electric Co., McKinnon No. 1 and No. 2 mines of Routt County Development, Ltd., B Canyon mine of the United States Steel Corp., Belina No. 2 and O'Connor mines of Valley Camp of Utah, Inc.

The draft environmental impact statement is available for public review in the U.S. Geological Survey (USGS) Library, 1526 Cole Boulevard, Golden, Colo.; the USGS Library, Room 4A100, 12201 Sunrise Valley Drive, Reston, Va.; USGS Area Mining Supervisor's Office, 8426 Federal Building, 125 South State Street, Salt Lake City, Utah; USGS District Mining Supervisor's Office, 126 Elk Street, Rock Springs, Wyo.; Office of the Regional Manager, Conservation Division, USGS, 7200 West Alameda Avenue, Lakewood, Colo.; Office of the State Director, Bureau of Land Management (BLM), University Club Building, 136 East South Temple, Salt Lake City, Utah; BLM Distict Office, Moab, Utah; BLM District Office, Richfield, Utah; BLM Price River Resource Area Office, Price, Utah; BLM Henry Mountain Resource Area Office, Hanksville, Utah; BLM Denver Service Center Library, Building 50, Federal Center, Denver, Colo.; Forest Supervisor's Office, USDA Forest Service (USFS), Manti-La Sal National Forest, 350 East Main Street, Price, Utah; USFS Ferron District Ranger, 50 South Main Street, Ferron, Utah; USFS Forest Supervisor, Fishlake National Forest, 170 North Main Street, Richfield, Utah; USFS Richfield District Ranger, 55 South First East, Richfield, Utah; USFS Teasdale District Ranger, Teasdale, Utah; USFS Loa District Ranger, Loa, Utah.

Copies will also be available for public review at the following libraries: Utah State University, Logan, Utah; University of Utah, Salt Lake City, Utah; Brigham Young University, Provo, Utah; Weber State College, Ogden, Utah; Southern Utah State College, Cedar City, Utah; Dixie College, St. George, Utah; Carbon College of Eastern Utah, Price, Utah; Sevier County Bookmobile, 83 East Lenter Street, Richfield, Utah; Price Public Library, 159 East Main Street, Price, Utah; Salt Lake City Public Library, 209 East 500 South, Salt Lake City, Utah; Salt Lake County Public Library, 2197 East 7000 South, Salt Lake City, Utah; Richfield Public Library, 83 East Center Street, Richfield, Utah; Carbon-Emery County Bookmobile, 159 East Main Street, Price, Utah; and Northern Arizona University Library, Flagstaff, Ariz.

A limited number of copies are available on request from the USGS Land Information and Analysis Office, Stop 701, Box 25046, Federal Center, Denver, Colo. 80225.

Written comments on the draft statement will be accepted until the close of business, December 26, 1978. All substantive comments received will be considered in preparing the final environmental statement on this proposal. Written comments should be addressed to Director, U.S. Geological Survey, National Center, Mail Stop 108, Reston, Va. 22092.

Notice is also given that oral and written comments will be received at public hearings scheduled on December 5, 1978, at the Salt Palace, Salt Lake City, Utah; on December 6, 1978, at Richfield, Utah; and on December 7, 1978, at Price, Utah. Hearings at all locations will start at 1 p.m. and 7 p.m. and will continue until all who wish to testify have been heard. Anyone wishing to make oral presentations at the hearings should submit their requests in writing at the hearings or by mail to the Federal Task Force Leader, U.S. Geological Survey, 350 South Main Street, Post Office Building, Salt Lake City, Utah 84101. Persons wishing to give oral comments are requested to limit their testimony to 10 minutes. Copies of complete oral statements and written comments presented at the hearings will be made part of the official record.

Dated: October 20, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-30053 Filed 10-24-78; 8:45 am]

[4310-10-M]

[Secretary's Order [3027]

INTERIM LEGISLATIVE AUTHORITY FOR THE TRUST TERRITORY OF THE PACIFIC ISLANDS

This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Acting Secretary of the Interior has issued order No. 3027 dated September 29, 1978, to effect an interim reconstitution of the legislative authority of the government of the Trust Territory of the Pacific Islands (TTPI).

The order, which is published in its entirety below, provides interim arrangements for separate legislative authority for the TTPI districts that will become the Federated States of Micronesia, the Marshall Islands and Palau Districts. The concept of legislative and fiscal separation was discussed with members of the political status and transition commissions representing the central districts of the trust territory (the future Federated States of Micronesia) and the Marshall Islands District and the Palau District in Saipan during the week of September 18. These discussions continued through most of the week of September 25 prior to the issuance of the order. The political leadership of the legislative bodies were aware of changes in the legislative and fiscal structure of the trust territory contemplated by the order.

Further information regarding the order may be obtained from Mr. George Milner, Deputy Director, Office of Territorial Affairs, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-4736.

Dated: October 11, 1978.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY

ORDER NO. 3027

Subject: Interim transition to governments based on locally developed constitution—Trust Territory of the Pacific Islands.

Section 1 *Purpose.* The purpose of this order is to effect interim reconstitution of the legislative authority of the Government of the Trust Territory of the Pacific Islands; to provide for new interim legislative authority for the Districts that will become the Federated States of Micronesia (i.e.: Kosrae, Yap, Ponape, and Truk), the Marshall Islands and Palau Districts; to cancel the elections for the Congress of Micronesia scheduled for November 1978; to provide for the segregation of revenues and fiscal matters among the Marshall Islands District, Palau District, and the Districts that will become the Federated States of Micronesia; and to provide; that the High Commissioner shall initiate discussions with appropriate representatives for the purpose of reorganizing the Trust Territory Government to give appropriate effect to governments based on locally developed constitutions in the Marshall Islands, the Palau District, and the Districts which will comprise the Federated States of Micronesia.

Section 2 *Definitions.* For the purpose of this order, the terms belows shall have the following definitions unless the context clearly indicates otherwise:

a. "District" means any one of the chartered or administrative districts of the Trust Territory of the Pacfic Islands not including the Northern Mariana Islands;

b. "Trust Territory Legislature" means any one of the three legislative bodies reconstituted and given paramount local legislative authority pursuant to Section 3 of this order;

c. "Trust Territory statutory law" means the Trust Territory Code and all laws enacted by the Congress of Micronesia and approved by the High Commissioner as of the effective date of this order;

d. "Federated States of Micronesia" means the future political entity which will be comprised of the districts of Kosrae, Yap, Ponape, and Truk.

Section 3 *Legislative Authority.*

a. Except as provided in Section 4d, of this order, the legislative authority of the Government of the Trust Territory is hereby vested in three Trust Territory Legislatures. For the Districts of Kosrae, Yap, Ponape and Truk, this authority shall reside in the "Interim Congress of the Federated States of Micronesia," which shall consist of two houses, the Senate and the House of Representatives. For the District of Palau, this authority shall reside in the "Palau Legislature," which shall be organized according to the terms of the charter of the Palau Legislature in force on the effective date of this order. For the District of the Marshall Islands, this authority shall reside in the "Marshall Islands Nitijela," which shall be organized according to the terms of the charter of the Marshall Islands Legislature in force on the effective date of this order.

b. The authority of each of the three Trust Territory Legislatures shall be co-extensive; each shall enjoy the same relationship with the executive authority of the Government of the Trust Territory; but the authority and responsibility of each of the Trust Territory Legislatures shall not extend beyond the Districts which elect members to it.

c. Each of the Trust Territory Legislatures shall, as to their respective jurisdictions, succeed to the authority of the Congress of Micronesia. As of October 1, 1978, the Trust Territory Legislatures may meet in regular session.

Section 4 *Transition in Legislative Authority.*

a. The election of the Eighth Congress of Micronesia, scheduled for November 7, 1978, is hereby canceled.

b. (1) The members of the Seventh Congress of Micronesia representing the Districts that will constitute the Federated States of Micronesia shall constitute the Interim Congress of the Federated States of Micronesia. Vacancies in membership shall be filled in the same manner as provided in Part III, Section 21 of Secretarial Order 2918.

(2) The terms of the members of the Interim Congress of the Federated States of Micronesia shall extend until such time as the first Congress of the Federated States of Micronesia is elected and organized pursuant to the Constitution of the Federated States of Micronesia.

(3) Provision for election of the Congress of the Federated States of Micronesia not later than March 31, 1979, and organization of that Congress not later than May 15, 1979, shall be made by the Interim Congress of the Federated States of Micronesia.

c. The terms of the members of the Seventh Congress of Micronesia representing the Marshall Islands and the Palau Districts shall expire as provided in Section 4 d, of this order. The Nitijela and the Palau Legislature shall provide by law that such persons shall be members-at-large of their respective Trust Territory Legislatures. The terms of these members-at-large shall be determined by the Nitijela and the Palau Legislature respectively and their compensation shall be no less than that provided by law for the elected members of those Trust Territory Legislatures.

d. Notwithstanding any other provision of this order, the Seventh Congress of Micronesia shall retain its authority and responsibility under Trust Territory law relating to the July 12, 1978, referendum on the Constitution of the Federated States of Micronesia. The authority of the Congress to conduct legislative investigations as set forth in Title 2 of the Trust Territory Code shall remain in effect with respect to the referendum in all six administrative districts. This authority shall not extend beyond November 1, 1978, at which time the Seventh Congress of Micronesia shall be dissolved unless it is earlier dissolved by its own action. During the period of this continued legislative authority of the Seventh Congress of Micronesia, the provisions of the Trust Territory referendum law and the provisions of the Code relating to investigatory authority of the Congress may not be amended by any Trust Territory Legislature or the Congress of Micronesia.

e. The Seventh Congress of Micronesia shall also have the authority to consider and enact such legislation as the High Commissioner may submit relative to the implementation of Section 7 of this order. The terms of office of all members of the Seventh Congress of Micronesia shall expire upon the dissolution of that Congress.

Section 5 *Continuation of Laws.* Trust Territory statutory law shall continue in full force and effect, except as modified by this order, until and unless modified or repealed by appropriate action by any of the Trust Territory Legislatures for its respective jurisdiction. The term "Interim Congress of the Federated States of Micronesia," "Palau Legislature" or "Marshall Islands Nitijela" shall be substituted for the term "Congress of Micronesia" wherever the latter term appears in Trust Territory statutory law in its application to their respective jurisdictions.

Section 6 *Trust Territory-Wide Programs.* Trust Territory Social Security laws shall continue in effect on a Trust Territory-wide basis and Social Security taxes shall continue to be collected, deposited, and administered by the Trust Territory Social Security Fund.

Section 7 *Revenues.*

a. Except as provided by Section 6 of this order, effective October 1, 1978, all taxes, fees, interest, royalties, fines, licenses, and other government charges (hereinafter referred to as "revenues") collected pursuant to any provision of Trust Territory statutory law shall be deposited in full to the treasury of the Trust Territory Legislature having jurisdiction for the District of origin of such revenue, except in the case of those Districts under the legislative jurisdiction of the Interim Congress of the Federated States of Micronesia, in which case the revenues shall be distributed among the Interim Congress of the Federated States of Micronesia and its respective District legislatures in accordance with the provisions of appropriate Trust Territory statutory law.

b. The Revenue Division of the Government of the Trust Territory shall continue to have the authority and responsibility to collect revenues due pursuant to Trust Territory statutory law until such time as any one of the Trust Territory legislatures provides otherwise. During the period of such responsibility, the Revenue Division of the Government of the Trust Territory shall assess each Trust Territory legislature for the actual expense of revenue collection and attendant administrative expenses.

Section 8 *Trust Territory Headquarters.* The High Commissioner shall have the authority to hire such professional and administrative staff as may be necessary to carry out his duties and responsibilities. Reorganization of the Office of the High Commissioner and Trust Territory Government Headquarters as they exist on the effective date of this Order may be made by the High Commissioner including the establishment of new departments, bureaus, offices and lines of authority. Departments, bureau, and office subdivisions and lines of authority shall be set forth in a table of organization approved by the High Commissioner. Actions affecting Federal personnel are subject to the limitations contained in 205 DM 8.1C (6).

Section 9 *Government Reorganization.* Recognizing that this order is an interim step toward reorganization of the Government of the Trust Territory of the Pacific Islands in anticipation of the establishment of constitutional governments and the termination of the Trusteeship Agreement, the High Commissioner is directed to initiate consultations to prepare recommendations to the Secretary of the Interior for addition-

al governmental reorganization giving effect to the maximum possible extent to developing constitutional arrangements consistent with the obligations of the High Commissioner, the Secretary of the Interior, and the United States Government under the Trusteeship Agreement, such laws of the United States as have been extended to the Trust Territory, and Executive Order 11021, as amended. Such consultations shall be completed as soon as practicable and should be completed by December 31, 1978, and recommendations forwarded to the Secretary of the Interior no later than January 5, 1979.

Section 10 *Superseded Authority and Effective Date.*

a. The provisions of Secretarial Order No. 2918, as amended, and other prior orders of the Secretary of the Interior, insofar as they are inconsistent with the provisions of this Order, are hereby superseded.

b. This Order takes effect on October 1, 1978. Its provisions will remain in effect until it is Amended, Superseded, or Revoked, whichever occurs first.

Dated: September 29, 1978.

JAMES A. JOSEPH,
Acting Secretary of the Interior.

[FR Doc. 78-29979 Filed 10-24-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-58]

CERTAIN FABRICATED STEEL PLATE PRODUCTS FROM JAPAN

Preliminary Conference

Notice is hereby given that a Preliminary Conference will be held in connection with the above styled investigation at 10 a.m. on Wednesday, November 1, in Room 610 Bicentennial Building, 600 E Street NW., Washington, D.C. Notice of this investigation was published in the FEDERAL REGISTER on September 15, 1978 (43 FR 41299). The purposes of this conference are to review Discovery Statements, to set dates for the final prehearing conference and hearing, and to resolve any other matters necessary to the conduct of this investigation.

If any questions should arise not covered by these instructions, the parties or their counsel shall call the chambers of the undersigned Presiding Officer.

The Secretary shall serve a copy of this notice upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued October 19, 1978.

JUDGE DONALD K. DUVALL,
Presiding Officer.

[FR Doc. 78-30179 Filed 10-24-78; 8:45 am]

[7020-02]

[AA1921-185]

NYLON YARN FROM FRANCE

Determination of No Injury or Likelihood Thereof

On July 18, 1978, the U.S. International Trade Commission received advice from the Department of the Treasury that nylon yarn from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on July 26, 1978, the Commission instituted investigation No. AA1921-185 under section 201(a) of said act to determine whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For purposes of Treasury's determination, the term "nylon yarn" refers to nylon yarn and grouped nylon filaments, not textured, provided for in items 309.3030, 309.3130, 310.0149, and 310.0249 of the Tariff Schedules of the United States Annotated (TSUSA).

Notice of the institution of the investigation and of the public hearing held in connection therewith was published in the FEDERAL REGISTER of August 1, 1978 (43 FR 33833). The public hearing was held in Washington, D.C., on August 29, 1978, and all persons requesting the opportunity to appear were permitted to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested persons and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

DETERMINATION

On the basis of information developed in investigation No. AA1921-185, the Commission unanimously determined [1] that an industry in the United States is not being, and is not likely to be injured, and is not prevented from being established by reason of the importation of nylon yarn from France that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

[1] Chairman Parker, Vice Chairman Alberger, and Commissioners Moore and Bedell. Commissioner Stern had not yet assumed her duties as a Commissioner at the time that the determination was made.

STATEMENT OF REASONS OF CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS BILL ALBERGER, GEORGE M. MOORE, AND CATHERINE BEDELL

In order for a Commissioner to make an affirmative determination in an investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established, and the injury or likelihood thereof must be by reason of imports at less than fair value (LTFV).

Determination. On the basis of information obtained in this investigation, we determine that an industry in the United States is not being and is not likely to be injured, and is not being prevented from being established [2] by reason of the importation of nylon yarn and grouped nylon filaments from France, which the Department of the Treasury (Treasury) has determined are being, or are likely to be sold at LTFV.

The imported article and the domestic industry. The subjects of this investigation are nylon yarn and grouped nylon filaments and includes all nylon yarn and grouped nylon filaments, [3] not textured. Nylon yarn and grouped nylon filaments are widely used in three major end use categories: industrial, carpet, and textile. We consider the relevant industry in this investigation to be those facilities in the United States devoted to the production of textile nylon yarn and grouped nylon filaments. At the present time, eight U.S. firms produce these articles.

LTFV sales. Treasury investigated imports during the period August 1, 1977, to January 31, 1978. The investigation was limited to Rhone Poulenc Textiles who is estimated to have accounted for 87 percent of all U.S. imports of nylon yarn and grouped nylon filaments from France. Comparisons were made on 83 percent of the sales from Rhone Roulenc to the United States. LTFV margins were found on 100 percent of the sales compared, with a weighted average margin of 22.4 percent.

The question of injury or likelihood by reason of LTFV sales U.S. imports and market share.—Total imports of textile nylon yarn increased by more than 75 percent between 1975 and 1976, more than 30 percent in 1977 and declined by more than 10 percent

[2] Prevention of the establishment of an industry is not an issue and will not be discussed further.

[3] For purposes of its investigation, Treasury defined "nylon yarn" as meaning nylon yarn and grouped nylon filaments, not textured, provided for in items 309.3030, 309.3130, 310.0149, and 310.0249 of the Tariff Schedules of the United States. The commission also has adopted this definition.

in the first 6 months of 1978 from the comparable period of 1977. Imports from France increased 6.2 percent in 1976, 28 percent in 1977, and then dropped off by 50 percent in the first half of 1978. During the period 1975 to June 1978, imports from France constituted less than 20 percent of total imports. The French nylon yarn accounted for 1.5 percent of total U.S. consumption in 1975, 1.9 percent in 1977 and fell to 0.7 percent in January-June 1978.

U.S. producers' shipments.—Producers' shipments declined from 360.6 million pounds in 1975 to 341.4 million pounds in 1976, then recovered to 366.3 million pounds in 1977. During January-June 1978, domestic shipments have continued to climb to 11.2 million pounds ahead of the comparable period of 1977; an increase of 5.9 percent.

Capacity utilization.—U.S. producers' capacity utilization remained at approximately 80 percent from 1975 through 1977, and has risen to 86 percent in the first half of 1978.

U.S. exports.—U.S. exports of textile nylon yarn closely followed the fluctuations of U.S. producers' domestic shipments. Exports declined by 1.6 million pounds from 1975 to 1976, but then increased 2.9 million pounds to 9.6 million pounds in 1977. During the first half of 1978, exports have increased dramatically over the comparable period of 1977, indicating a growing demand for American yarns in foreign markets.

Inventories.—U.S. producers' inventories have increased from 4.3 percent of domestic shipments at the end of 1975 to 8.6 percent at the end of 1977 and 15.3 percent in the first half of 1978. The inventory turnover ratio dropped during this period but is expected to level off in 1978. The data on inventories and the inventory turnover ratio are affected by the inclusion of data from a particular domestic company experiencing production problems. The inventory turnover ratio is raised significantly when data from this company is excluded.

Consumption.—U.S. consumption declined 1.2 percent from 1975 to 1976, but increased in 1977 to 9 percent over 1976. Consumption has continued to grow in the first two quarters of 1978, increasing 2 percent over the same period in 1977. The low growth rate for the textile nylon yarn industry is due to a number of factors; it is a "mature" industry in which markets are fairly well defined, increased competition from polyester, and lastly, apparently some competition between types of nylon.

Employment.—Both employment and man-hours increased steadily from 1975 to 1977, and have remained level in the first half of 1978.

Profits.—Net profits before taxes for the industry rose from $25.8 million in 1975 to $43.3 million in 1976, then fell off sharply in 1977 to $8.8 million although net sales increased steadily throughout the period. Net profits for 1978 projected to an annual basis indicate an increase of 16 percent over 1977. A portion of the profit loss can be attributed to higher costs. However, in 1976, although expenses rose modestly, the manufacturers average price rises were 10 percent to more than 20 percent, suggesting that prices may have increased before higher expenses occurred, and profits were thereby increased. The low profits in 1977 can also be attributed to the failure of one producer to maintain its market share due to increased competition from another domestic producer, rather than competition from imports.

Prices.—The margin of underselling of imports from France rose steeply in 1976, then dropped in 1977 and 1978 from that reported in 1976. In one of the three representative denier yarns for which price data was collected, prices offered by importers of the French product were higher than those offered by domestic producers by margins ranging from 1 to 6 percent in the period July 1975 through December 1977.

Lost sales.—Of the eight domestic producers, three furnished specific information on lost sales to imports from France. It is apparent from information gathered by the Commission, that quality and availability of the French yarn, as well as the desire of purchasers to develop an alternate source of supply, were all more important factors that price in those instances where purchasers bought the French yarn. Most of those customers no longer buy the French yarn.

Likelihood.—Furthermore, there is no likelihood of injury to the domestic industry producing textile nylon yarn and grouped nylon filaments as a result of LTFV imports from France. Producers shipments, apparent U.S. consumption, capacity utilization net sales, and profits show healthy increases for January-June 1978 in comparison to the comparable period of 1977.

Evidence of anticipated growth in the domestic market for nylon yarn is the fact that a major new producer, Chevron Fibers Co., entered in 1976. Another indication of the improved outlook for the domestic industry is that one of the two largest producers of textile nylon yarn, Monsanto Textiles Co., recently announced price increases of 7 to 9 percent on its textile-denier nylon yarns effective October 1, 1978. In the first 6 months of 1978, imports of textile nylon yarn from France have dropped to 0.7 percent of apparent U.S. consumption. One of the two French exporters, SNIA Viscosa, S.A., has discontinued production of textile nylon yarn for the U.S. market, and Rhone Poulenc plans to gradually curtail its exports to the U.S. market and withdraw completely by 1981.

Summary.—Considering all of these economic factors, it is apparent that this industry is not injured or likely to be injured by reason of imports from France at LTFV. U.S. imports from France have been minimal and have decreased in the first half of 1978; domestic producers shipments have continued to climb since 1976; capacity utilization has risen; U.S. exports have increased dramatically since 1977; inventories have increased, but only due primarily to a domestic company experiencing production problems; employment and man-hours have increased; profits declined in 1977, but due primarily to a number of nonimport related factors; and the lost sales reported were not the result of price. Thus we have found in the negative.

By order of the Commission.

Issued: October 20, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-30178 Filed 10-24-78; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ARCHITECTURE, PLANNING, AND DESIGN ADVISORY PANEL

Canceled Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Architecture, Planning, and Design Advisory Panel to the National Council on the Arts which appeared in the FEDERAL REGISTER, Vol. 43, No. 195, p. 46390, Friday, October 6, 1978, has been canceled. The meeting was originally scheduled to meet November 2, 1978, from 9 a.m. to 5:30 p.m., and on November 3, 1978, from 9 a.m. to 5:30 p.m., in Room 1426, Columbia Plaza Building, 2401 E Street NW., Washington, D.C.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operation, National Endowment for the Arts.

OCTOBER 23, 1978.

[FR Doc. 78-30100 Filed 10-24-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Meeting With the Federal Republic of Germany Reactor Safety Committee (RSK)

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), representatives of the Advisory Committee on Reactor Safeguards (ACRS) will meet with representatives of the Reactor Safety Committee (RSK), an advisory body to the regulatory agency for safety of nuclear installations of the Federal Republic of Germany on November 9-11, 1978. The meeting will be held in Room 1046, 1717 H Street NW., Washington, D.C. 20555.

Representatives of the ACRS, the RSK, and the Nuclear Regulatory Commission (NRC) Staff will meet to discuss reactor safety policy and practice in the United States and the Federal Republic of Germany.

The agenda for this meeting will be as follows:

NOVEMBER 9, 1978

8:30 a.m.-9:45 a.m.: Introduction (open).—Representatives of the ACRS and the RSK will present and discuss brief reports regarding the responsibilities and procedures of the respective bodies.

November 9, 1978 (10 a.m.-5 p.m.), November 10, 1978, and November 11, 1978 (closed).—Closed sessions will be held to discuss items related to nuclear plant and component design requirements, engineered safety features design and performance, risk assessment and related methodology, and application of safety research results and operating data to facility design and performance requirements.

Members of the ACRS and the RSK will discuss information considered confidential by the German Government and it will be provided only on the basis that it will be protected from public disclosure.

Procedures for the conduct of and participation in ACRS meetings were outlined in the FEDERAL REGISTER on October 4, 1978 (p. 45926). In accordance with these procedures, oral or written statements may be presented by members of the public. Questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

I have determined in accordance with subsection 10(d) of Pub. L. 92-463 that it is necessary to close these sessions to insure the security of information identified and supplied by a foreign government as confidential (5 U.S.C. 552b(c)(1)).

Further information regarding topics to be discussed, whether the meeting has been canceled 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 ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202-634-3265) between 8:15 a.m. and 5 p.m., Washington, D.C. time.

Dated: October 20, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-30206 Filed 10-24-78; 8:45 am]

[3190-01—M]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Docket 301-15]

CERTAIN TELEVISION LICENSES

Hearing

On August 29, 1978, the Chairman of Section 301 Committee received from certain U.S. television licensees a petition under section 301 of the Trade Act (19 U.S.C. 2411) alleging certain unfair trade practices by the Government of Canada. This petition was published in the FEDERAL REGISTER of Wednesday, September 6, 1978 (43 FR 39617). Petitioners have requested a public hearing on their complaint and in the above mentioned FEDERAL REGISTER notice, the date of November 29 was tentatively scheduled for that public hearing. Pursuant to this notice there will be a public hearing on the issues raised in the petition filed by certain U.S. television licensees. The hearing will be held on Wednesday, November 29, and if necessary will continue on Thursday, November 30, 1978. The hearing will be held at the Office of the Special Representative for Trade Negotiations, 1800 G Street NW., Washington, D.C. Room 730, beginning at 10:30 a.m.

Requests to present oral testimony and accompanying briefs must be received in the Office of the Special Representative for Trade Negotiations on or before November 21, 1978. Written briefs from those persons not wishing to present oral testimony should be received in the Office of the Special Representative for Trade Negotiations on or before the date of the hearing, November 29, 1978, in order to be considered by the Section 301 Committee. Interested persons are advised to refer to the regulations promulgated by the Office of the Special Representative for Trade Negotiations covering procedures to be followed in all section 301 proceedings (15 CFR 2006 as amended by FEDERAL REGISTER notice of Tuesday, Oct. 18, 1977 p. 556711.) Please note that all communications to the Chairman of Section 301 Committee should be addressed to the Office of the Special Representative for Trade Negotiations, Room 715, 1800 G Street NW., Washington, D.C. 20506.

a. Submission of briefs and Requests to Present to Oral Testimony. Requests for oral testimony and submission of written Briefs should conform to the procedures set forth in 15 CFR 2006.6 and 2006.7 (found in the FEDERAL REGISTER of Aug. 28, 1978 p. 39497).

b. Rebuttal Briefs. In order to assure parties an opportunity to contest information provided by other interested parties in written briefs and oral testimony, rebuttal briefs may be filed by any party within 15 days after the transcript of the hearing becomes available.

c. Attendance at Hearings. The hearing will be open to the public.

SHIRLEY A. COFFIELD,
Chairman, 301 Committee, Office of the Special Representative for Trade Negotiations.

[FR Doc. 78-30081 Filed 10-24-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-381; Adm. Proceeding File No. 3-5540]

BLOCK ENGINEERING, INC.

Application and Opportunity for Hearing

OCTOBER 17, 1978.

In the matter of Block Engineering, Inc., file No. 81-381.

Notice is hereby given that Bio-Rad Laboratories, Inc. ("Bio-Rad") on behalf of Block Engineering, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirements to file reports pursuant to sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. The Applicant is a Delaware corporation subject to the reporting provisions of sections 13 and 15(d) of the 1934 Act.

2. On July 26, 1978, New Block, Inc., a wholly owned subsidiary of Bio-Rad, merged with and into the Applicant.

3. Pursuant to the terms of this merger, all outstanding shares of Applicant's common stock not held by Bio-Rad and New Block were converted to rights to recieve $4.25 per share. Applicant's common stock was registered under 12(g) of the 1934 Act.

In the absence of an exemption, Applicant is required to file periodic reports pursuant to sections 13 and 15(d) of the 1934 act. Applicant believes that its requests for an order exempting it from the reporting requirements is appropriate in view of the fact that Applicant believes that the time, effort, and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested person not later than November 13, 1978, may submit to the Commission in writing his views of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued or upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29988 Filed 10-24-78; 8:45 am]

[8010-01-M]

[File No. 81-293; Administrative Proceeding File No. 3-5444]

FARMERS TELEPHONE CO.

Application and Opportunity for Hearing

OCTOBER 17, 1978.

In the matter of Farmers Telephone Co., file No. 81-293.

Notice is hereby given that Farmers Telephone Co. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from the provisions of sections 12(g), 13, 14, and 16 of the 1934 Act.

The Applicant states, in part:

1. The operations of the Applicant are limited to Grant County, Wis.;

2. Practically all of Applicant's securities are owned by Wisconsin residents;

3. Applicant currently is required to meet the reporting and review requirements of the Wisconsin Public Service Commission;

4. Applicant's future offerings of equity securities will be restricted to Wisconsin residents; and

5. There is no active trading market for Applicant's debt or equity securities.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than November 13, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communications or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29989 Filed 10-24-78; 8:45 am]

[8010-01-M]

[File No. 81-409; Administrative Proceeding File No. 3-550]

GULF REPUBLIC FINANCIAL CORP.

Application and Opportunity for Hearing

OCTOBER 17, 1978.

In the matter of Gulf Republic Financial Corp., file No. 81-409.

Notice is hereby given that Gulf Republic Financial Corp. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order granting Applicant an exemption from the provisions of section 15(d) of the 1934 Act.

The Applicant states, in part:

1. On July 12, 1978, GRFC, a company wholly owned by Founders (a group consisting of Arnold M. Miller, William E. Wright, J. Livington Kosberg, and Jerry E. Finger and certain members of trusts for their respective families), merged into Applicant. As a result of the merger, the shareholders of Applicant received $13 per share in cash for their stock and Applicant no longer has any publicly owned common stock. Founders is now the sole shareholder of Applicant.

2. The Applicant has filed with the Commission its proxy statement, dated June 3, 1978, containing audited financial statements for the year ended June 30, 1977, plus a consolidated summary of earnings of Applicant for the 5 years ended June 30, 1977.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 13, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29990 Filed 10-24-78; 8:45 am]

[8010-01-M]

[File No. 81-394; Administrative Proceeding File No. 3-5546]

MICHIGAN POWER CO.

Application and Opportunity for Hearing

OCTOBER 17, 1978.

In the matter of Michigan Power Co. file No. 81-394.

Notice is hereby given that Michigan Power Co. ("MPC") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting it from the periodic reporting requirements under sections 13(a) and 15(d) of the 1934 Act.

MPC's application discloses in part:

(1) On July 16, 1978, MPC redeemed its outstanding shares of cumulative preferred stock. As a result of such redemption, MPC no longer had any public security holders; and

(2) The Commission approved such redemption pursuant to section 11(e) of the Public Utility Holding Company Act (Holding Company Act Release No. 20569, dated June 1, 1978).

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than November 13, 1978, may submit to the Commission in writing his views or any substantital facts bearing on this application or the desireability of a hearing thereon. Any such communications or requests should be addressed: Secretary, Securities, and Exchange Commission, 500 North Capitol Street NW., Washington D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issures of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc 78-29991 Filed 10-24-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15230]

DISCLOSURE IN PROXY AND INFORMATION STATEMENTS

Anti-Takeover or Similar Proposals

The Advisory Committee on Corporate Disclosure in its report urged the Commission staff to review closely proxy materials containing anti-takeover proposals in order to insure that there is adequate discussion of their disadvantages as well as advantages.[1] In february of 1978, the Commission responded with an indication that the suggestion would be implemented administratively and would be the subject of specific instructions to the staff of the Division of Corporate Finance.[2]

The Division is now making these instructions available to the public in the form of a statement of its views in order to assist registrants in preparing proxy or information statements which may contain such proposals for the upcoming proxy season. It should be noted, however, that these instructions have neither been reviewed nor approved by the Commission and therefore only reflect the views of the staff of the Division of Corporation Finance. The Division stresses, moreover, that these instructions are merely for the guidance of the staff and are subject to revision without formal notice. The Division also notes that the facts and circumstances underlying particular proxy or information statements or other filings must be given great weight and that the importance and effect of these instructions will vary as the context requires.

I. BACKGROUND

The increased use of tender offers to obtain corporate control has prompted many companies to consider defensive techniques to fend off hostile offers. In the past, these defensive measures have typically focused on actions taken on the eve of a tender offer or during a tender offer contest.[3] The primary purpose of such measures has been to deter unfriendly takeovers by relying, for the most part, on the single most effective weapon in the arsenal of the subject company—delay.[4] Recently, companies which view themselves as potential subject companies have given increased attention to other defensive measures, such as internal controls in the company's charter or bylaws. As with the delay techniques, the primary purpose of the defensive charter provisions is to deter unfriendly takeovers. Rather than using delay as the means to accomplish this purpose, these measures are designed to make the subject company unattractive as a potential target long before any specific tender offer is announced. By making a tender offer impracticable or by increasing the bidder's costs and likelihood of failure should an offer be made, these provisions are intended to cause a potential bidder to look elsewhere, rather than commence a tender offer for such a company.

Typically, a corporation proposing to adopt amendments to its charter or bylaws is required by State corporation law to submit the proposal to a shareholder vote.[5] In such cases, cor-

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[1] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess., Nov. 3, 1977 ("Report"), at p. 39.

[2] Securities Act Release No. 5906 (Feb. 15, 1978).

[3] These measures include, but are not limited to the following:

(a) Repurchase its own securities, to make it less likely for the tender offeror to obtain control of the company;

(b) Induce friendly third parties to make open market purchases of the target company's securities;

(c) Announce dividend increases, or stock splits;

(d) Issue additional shares or classes of stock;

(e) Take steps to create an incompatibility between the target company and the tender offeror, for example, in inducing possible antitrust violations should the tender offer be successful;

(f) Arrange a defensive merger;

(g) Enter into restrictive loan agreements, with default to occur should the tender offer succeed;

(h) Institute litigation, challenging either directly or collaterally the conduct or effect of the tender offer;

(i) Arrange for cross or circular ownership of voting stock by parent and subsidiary corporations;

(j) Make the dismissal of directors expensive, by entering into costly employment contracts;

(k) Negotiate contracts—for example, labor, rent, loans or leases—which provide for acceleration, increase, or renegotiation of payment in the event of a change in management;

(l) Acquire other companies or accelerating the payment of outstanding debt for the purpose of spending access cash, thereby making the balance sheet of the target company less attractive to a potential offeror;

(m) Judicial action seeking a temporary or permanent injunction against the bidder alleging antitrust violations, inadequate disclosure and other securities laws violations; and

(n) Triggering the application of State anti-takeover statutes.

[4] Since time is of the essence to a bidder in tender offers, delay permits the subject company to prepare and consolidate an effective defense and to frustrate the bidder's efforts.

[5] A table listing a number of anti-takeover provisions, including novel measures, is appended to this release as Attachment A. This table is not intended to be an exclusive

Footnotes continued on next page

porations subject to, inter alia, section 12 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) are required to furnish either proxy materials or information statements to shareholders, pursuant to Regulation 14A (17 CFR 240.14a-1 to 240.14a-103) or Regulation 14C (17 CFR 240.14c-1 to 240.14c-101), respectively. Over the years, the Division has reviewed many proxy and information statements containing anti-takeover measures and has gained a great deal of experience in identifying issues, formulating comments and dealing with registrants and their counsel.

Since at least 1969, the Division has taken the position that when management sponsors anti-takeover proposals and other devices to insulate management from removal, the issuer's proxy material or information statements should disclose in a prominent place that the overall effect of the proposal is to render more difficult the accomplishment of mergers or the assumption of control by a principal stockholder, and thus to make difficult the removal of management. Moreover, the report recommended that the Commission staff should intensively review proxy materials containing anti-takeover proposals with a view to requiring more adequate and uniform disclosure of the advantages and disadvantages of the management's proposals.[6]

In view of this recommendation and the increased attention given to defensive measures, the Division wishes to advise registrants that the treatment of anti-takeover proposals in proxy materials or information statements will generally be reviewed for compliance with the position stated below.[7] It is hoped that this advance notice will facilitate the preparation of proxy materials or information statements for the upcoming proxy season.

II. Position of Division of Corporation Finance With Respect to Disclosure in Proxy or Information Statements Containing Anti-Takeover Proposals

The Division's review of proxy and information statements containing anit-takeover measures will continue to focus on three areas: the placement of the disclosure in the statement; the disclosure of anti-takeover proposals generally; and the disclosure of specific types of provisions being proposed.

A. PLACEMENT OF DISCLOSURE

If a proxy or information statement contains an anti-takeover proposal, it should be included in a list of all proposals in the proxy soliciting material or disclosed in the information statement. The listing should be placed in the notice or forepart of the materials. If more than one anti-takeover proposal is included, they should not be separated by unrelated proposals in the listing made in the notice of materials.

The disclosure concerning an anti-takeover proposal should be set forth in a prominent place in the proxy or information statement. All of the information which is related to the proposal should be set forth in one place in the materials. If disclosure in more than one place cannot be avoided, cross-references are suggested. If the statement contains more than one anti-takeover proposal, the disclosure of each should generally not be separated by unrelated information or other proposals in the statement.

B. CONTENT OF DISCLOSURE

1. *General issues.* Despite significant variations in the form and operation of anti-takeover proposals, there are several areas in which certain basic disclosures are generally applicable. These include:

a. The reason(s) for the proposal and the bases of such reason(s). The proxy or information should clearly indicate why management is proposing to amend the corporation's charter or bylaws. The term "bases" for the reasons means an explanation of the factors and/or principles supporting or serving as a foundation for the reason stated.

If the proposal is the result of management's knowledge of any specific effort to accumulate the issuer's securities or to obtain control of the issuer by means of a merger, tender offer, solicitation in opposition to management or otherwise, a description of any such effort should be included. If the measure is not the result of any specific effort, disclosure should be made to that effect and a statement included as to why, in the absence of such efforts, the measure is being proposed at this time.

Disclosure should also be made as to whether the corporation's charter or bylaws presently contain other provisions having an anti-takeover effect, whether the instant proposal is part of a plan by management to adopt a series of such amendments, and whether management presently intends to propose other anti-takeover measures in future proxy solicitations. If similar measures have been adopted, are being proposed or considered, the inter-relationship of the proposals/provisions should be discussed. A chart or table which would list charter or bylaw provisions that have already been adopted which can be used as defensive provisions may also be appropriate. This chart, among other things, may include disclosure concerning a class of authorized, but unissued, common or preferred securities with respect to which the board of directors retains the power to determine voting rights. Additionally, an indication should be made whether or not cumulative voting is provided under the corporation's charter or bylaws or pursuant to State law.

b. The overall effects of the proposal, if adopted. The impact of the proposed amendments upon management's tenure and upon any proposal to alter the structure of the corporation should be disclosed. If appropri-

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Footnotes continued from last page

listing of all such measures. Proxy materials or information statements may contain variations of the provisions listed or other proposals which may be or operate as defensive charter provisions but which may not be included in the table. For a detailed description of specific defensive charter amendments and these strategies generally, *see Cary, Corporations* 448 (1969 ed.); Aranow & Einhorn, *Tender Offers for Corporate Control* 219-276 (1973); Aranow, Einhorn & Beristein, *Development in Tender Offers for Corporate Control* 193-206 (1977); Brown, *Corporation Defenses to Takeover Bids*, 44 Tul. L. Rev. 517 (1970); Cary, *Corporate Devices Used to Insulate Management from Attack*, 25 Bus. Law 339 (1970); Schmults and Kelly, *Cash Take-Over Bids—Defense Tactics*, 23 Bus. Law 115 (Nov. 1967); Bradshaw, *Defensive Tactics Employed By Incumbent Managements in Contesting Tender Offers*, 21 Stan L. Rev. 1104 (1969); Kennedy, *Defensive Takeover Procedures Since the Williams Act*, 19 Catholic U. L. Rev. 158 (1969); Mulaney, *Guarding against Takeovers—Defensive Charter Provisions*, 25 Bus. Law (July 1970); Hayes and Taussig, *Tactics of Cash Takeover Bids*, 45 Harv. Bus. Rev. 135, 142-147 (March-April 1967); Panel, *Defending Target Companies*, 32 Bus. Law 1349-1364 (May 1977); Panel, *Tender Offer Litigation*, 32 Bus. Law 1433-1458 (May 1977); Yoran, *Advanced Defensive Tactics Against Takeover Bids*, 21 Am. J. Comp. L. 541 (1973); "A Backfire from State Takeover Laws" *Business Week* 25 (Aug. 29, 1977), and *Wall Street Journal*, p. 10 (Aug. 29, 1977).

[6] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., November 3, 1977, at D-39 and 415-416.

[7] In this regard, the Division has established a monitoring system which is mainly intended to quantify the information received via proxy materials. The specific purposes for the monitoring program are: (1) To evaluate the disclosure being made by companies proposing such measures; (2) to determine whether more specific dsclosure requirements should be published concerning the purpose and/or effect of such proposals; and (3) to collect data on the frequency of use of such proposals which may serve as an empirical basis for congressional proposals or testimony, or rulemaking action by the Commission. The monitoring proram will involve both preliminary materials and definitives. It is presently anticipated that the program, which is already in operation, will continue beyond the upcoming proxy season.

ate, such disclosure should include statements that the overall effects of the proposal, if adopted, may (would) be to render more difficult or to discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a larger block of the corporation's secutrities and the removal of incumbent management. A statement that the proposal could make the accomplishment of a given transaction more difficult even if it is favorable to the interests of shareholders may be warranted. Thus, the disclosure should focus on the effects of making the removal of management more difficult even if such removal would be beneficial to shareholders generally, and the effect of limiting shareholder participation in certain transactions such as mergers or tender offers whether or not such transactions are favored by incumbent management.

c. the advantages and disadvantages of the proposal. Although this item may overlap disclosure of the effects of the transaction, information should be included concerning the advantages and disadvantages of the proposal both to incumbent management and to shareholders generally. For example, if one of the effects of the proposal would be to render the accomplishment of a tender offer more difficult, the disclosure could include statements to the effect that such a provision may be beneficial to management in a hostile tender offer and may have an adverse impact on shareholders who may want to participate in such a tender offer. The favorable aspects of the proposal, to either management or shareholders, should also be disclosed.

d. Disclosure of how the proposal will operate. Because of the complicated nature of many of these proposals, it may be beneficial to shareholders to include an explanation of the operation of the proposal, if adopted. In the past, examples of the operation of staggered boards have been disclosed. Accordingly, an explanation of the operation of the proposal(s) should also be included in the proxy or information statement. Such an explanation is itended to assist shareholders in their understanding of what they are being asked to vote in favor of.

e. Whether the proposal was the subject of a vote of the issuer's board of directors and, if so, the results of such vote. Additionally, consideration should also be given to identifying any dissenting directors and stating the reasons given for any such dissent if available.

f. Limitations on the adoption of such proposals. Disclosure should be included as to whether the rules or practices of any stock exchange on which the issuer's securities are listed reserve the right to refuse to list or to de-list any stock which has unusual voting provisions that tender or nullify or restrict its voting.

g. Comparison of anti-takeover measure with comparable provision under State corporation law. If the charter or by-law amendment pertains to a matter that is specifically addressed under State corporation law, a comparison of the provision of such State corporation statute with those of the instant proposal should be furnished. For example, if the defensive charter amendment concerns the vote necessary to approve an extraordinary corporate transaction such as a merger, the provision of the proposal, such as the minimum percentage required, should be compared with that under the State statute.

2. ISSUES INVOLVING SOME SPECIFIC ANTI-TAKEOVER PROPOSALS

Because of the varied nature of anti-takeover proposals, disclosure specifically applicable to the type of proposal should also be made. Where applicable, the disclosure should include the following:

a. *Supermajority*[8] *voting provisions.* One of the specific effects should be indicated to be that management may obtain a veto power over mergers regardless of whether the transaction is desired by or beneficial to a majority of the shareholders and thereby assists management in retaining their present positions. Another specific effect would be to give the holders of a minority of the total shares outstanding and entitled to vote a veto power over a merger which management and/or a majority of the shareholders may believe is desirable and beneficial. In these types of proposals, disclosure should be included of the aggregate percentage of outstanding voting securities beneficially owned by management, the board of directors and principal shareholders of the corporation (including any persons or groups of persons who have filed a Schedule 13D with the Commission). If a supermajority is not needed to repeal such a provision and/or a supermajority is not needed to adopt the provision, disclosure of the reasons should be made.

b. *Classification of directors to serve for staggered terms.* Unlike certain internal corporate defense measures, staggered board provisions affect every election of directors and are not triggered by the occurrence of a particular event such as a hostile merger. Thus, such systems of electing directors make it more difficult for shareholders to change the majority of directors even when the only reason for the change may be the performance of the present directors. The fact that the provisions, if adopted, would be applicable to every election of directors, rather than only an election occurring after a change in control of the issuer, should be disclosed. The number of annual meetings necessary to change the majority of the directors under the staggered system should be contrasted to the number of annual meetings necessary for change under the present system. If a purpose of the proposed amendment is to limit the voting power of a particular block of common stock or to frustrate accumulations of such blocks, appropriate disclosure should be made. If one of the reasons for the proposal is to insure the continuity of the Board of Directors and/or management, it is suggested that management be asked to disclose whether there have been any problems with respect to such continuity in the past and, if so, to furnish a description of them.

c. *Authorization of certain classes of common or preferred stock.* In certain circumstances, the authorization of classes of preferred or common stock with either unspecified voting rights or rights providing for the approval of extraordinary corporate transactions may be used to create voting impediments or to frustrate persons seeking to effect a merger or to otherwise gain control of the issuer. If used for such a purpose, disclosure should be included as to whether the securities could be privately placed and, if such placement is contemplated by the issuer, whether the purchasers have any affiliation with the issuer or any agreement or understanding as to the manner in which the securities are to be voted.

In certain instances, a proposal to increase the amount authorized of a class of voting securities may have an anti-takeover effect. If used for such a purpose, the considerations discussed above would be applicable. Moreover, such additional shares could be used to dilute the stock ownership of persons seeking to obtain control of the issuer. If the purpose for the increase in the authorization is stated to be the elimination of later delays associated with a stockholder vote on specific issuances, reference should be made to any stock exchange requirements calling for a stockholder vote on issuances of additional shares. Additionally, the number of shares unissued and not reserved for issuance should be stated.

Questions related to these staff instructions should be directed to Rowland Cook, 202-755-1750.

[8] Supermajority means any percentage requirement that exceeds the comparable requirement under applicable State law. If the requirement under State law is 66⅔ percent to approve a merger, a supermajority provision would be any percentage in excess of the State requirement—such as 80 percent.

By the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 13, 1978.

ATTACHMENT A.—Table Relating to Internal Corporate Controls or Antitakeover Measure Disclosed in Proxy or Information Statement

Defensive corporate charter amendments/provisions may include, but are not limited, to:

(1) Classification of directors or staggering of boards

(2) Provisions to abolish cumulative voting

(3) Provisions establishing supermajority approval requirements (for example, requiring an 80 percent favorable vote) for certain corporate transactions including, but not limited to, any proposed merger or sale of assets

(4) Provisions requiring a supermajority vote to cancel a supermajority provision as described in category 3 above, but not to adopt one

(5) Provisions requiring a supermajority vote to amend the corporate charter in any relevant respect

(6) Provisions which reduce the supermajority required for a merger to a leser majority unless the other party to the transaction is a "related corporation" (such as one owning more than 5 percent of any class of voting securities of the issuer) in which case a merger would require supermajority approval of the common stock as a class in addition to approval by the holders of the voting power to all securities of the issuer entitled to vote

(7) The creation of a class of equity securities either common or preferred to be placed privately; the favorable vote of which is necessary to approve any tender offer, merger, sale or exchange of assets or other extraordinary corporate transaction

(8) Provisions which prevent the removal of directors without cause or by a supermajority vote

(9) Provisions prohibiting the removal from office for any reason of a director elected for a term longer than one year, notwithstanding any change in control due to tender offers, mergers or other transactions

(10) Provisions prohibiting the calling of special shareholder meetings altogether or allowing them to be called only upon the request of a holder or holders of a supermajority of the shares outstanding

(11) Provisions establishing the maximum permissible number of directors

(12) Provisions providing for the election of stand-by successor directors at the same time as the regular directors, who will fill a position upon the death or resignation of a regular director

(13) Reincorporation of the issuer in a state with an anti-takeover statute

(14) Creation of an Employee Stock Ownership Plan which, because of its size, percentage of total outstanding securities of the issuer which it may own, voting or other provisions, may be used in defense in a contested takeover attempt

(15) Provisions requiring the consideration for any merger following a tender offer to be no less than the highest consideration offered pursuant to the tender offer

(16) Shareholder approval of long term "sweetheart" employment contracts with executive officers of the issuer which cannot be abrogated or rescinded

[FR Doc. 78-30177 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release Nos. 33-5988, 34-15246, IC-10447]

PROCESSING POST-EFFECTIVE AMENDMENTS AND PRELIMINARY PROXY MATERIAL FILED BY INVESTMENT COMPANIES

Announcement of New Procedures

AGENCY: Securities and Exchange Commission.

ACTION: Announcement of New Procedures.

SUMMARY: The Commission's Division of Investment Management, which processes filings of registered investment companies, has adopted procedures designed to reduce the time needed to process certain routine investment company filings. The procedures were adopted in response to a projected increase in the number of filings to be processed by the Division. Review of annual updating post-effective amendments normally will be limited to financial statements, material which has been underscored or otherwise marked to indicate textual changes, and areas in which recent developments suggest that changes in disclosure are likely to be appropriate. Review of preliminary proxy material containing no proposals other than those relating to the uncontested election of directors, the ratification of the selection of accountants, and the continuation of a current advisory contract normally will be limited to a determination that it contains only these proposals.

EFFECTIVE DATE: October 19, 1978.

FOR FURTHER INFORMATION CONTACT:

W. Burrell Ellis, Assistant Director, 202-755-1190 or Anthony A. Vertuno, Special Counsel, 202-755-1192.

SUPPLEMENTARY INFORMATION: Consistent with its practice of publishing the views of its staff to assist issuers, their counsel and accountants, and other interested persons, the Commission has authorized the publication of this release which sets forth the Division of Investment Management's procedures henceforth applicable to certain investment company filings.

The Division, in order to reduce the time needed to process routine investment company filings, will adopt the following practices:

(1) *Post-effective amendments to registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a-1 et seq.) ("Securities Act").* The staff ordinarily will limit its review of annual updating post-effective amendments to (a) financial statements, (b) material which has been underscored or otherwise marked to indicate textual changes, and (c) areas in which recent developments suggest that changes in disclosure are likely to be appropriate.

(2) *Preliminary proxy material filed pursuant to Securities Exchange Act Rule 14a-6 (17 CFR 240.14a-6).* The staff ordinarily will limit its review of proxy statements which have no proposals other than those relating to the uncontested election of directors, the ratification of the selection of accountants, and the continuation of a current advisory contract to a determination that they contain no other proposals.

While these expediting procedures will be in effect generally, the staff may, at its discretion, increase its level of review with respect to individual filings. In this connection, it is important that persons making filings affected by the procedures described above should not assume that review has been completed without comment until ascertaining from the staff that there are no comments.

Any person making such a filing should comply with Securities Act Rule 472(a) (17 CFR 230.472(a)) and the note to Securities Exchange Act Rule 14a-6(a) requiring the marking of textual changes, and, in the letter transmitting the filing to the Commission, clearly indicate the extent and nature of changes from the last previous filing of the same kind and any problem areas to be called to the attention of the staff. A post-effective amendment that is the first filing of a registrant meeting the requirements of new Form N-1 (see Release No. 33-5964 (August 28, 1978) 43 FR 39548 (September 5, 1978)) should be marked to show textual changes from the last filing on Form S-5. The filing procedures for post-effective amendments discussed in Release 33-5738 (September 3, 1976), 41 FR 39012 (September 14, 1976), will remain in effect, and the continued cooperation of registrants is requested.

It is essential to the successful and continued employment of these procedures that registrants and their counsel act responsibly by preparing their filings so that they meet the required standards with the least necessity for staff review. Regardless of the procedure followed by the Division in its review of post-effective amendments and preliminary proxy material, registrants should be aware that the statutory burden of full disclosure is on the issuer, its affiliates, the underwriter, the accountants and others and that as a matter of law this burden cannot be shifted to the Commission or its staff. Attention is directed to *Escott* v.

BarChris Construction Corporation, et al., 283 F. Supp. 643 (D. S.D.N.Y. 1968).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 19, 1978.

[FR Doc. 78-30176 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 15241; SR-Amex-78-22, etc.]

AMERICAN STOCK EXCHANGE, INC., ET AL.

Filing of Proposed Rules Changes and Order Approving Proposed Rules Changes

OCTOBER 18, 1978.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006; Chicago Board Options Exchange, Inc. La Salle at Jackson, Chicago, IL 60604; Midwest Stock Exchange, Inc. 120 South LaSalle Street, Chicago, IL 60603; Philadelphia Stock Exchange, Inc., 17th Street and Stock Exchange Place, Philadelphia, PA 19103; Pacific Stock Exchange Inc. 618 South Spring Street, Los Angeles, CA 90014, (SR-Amex-78-22), (SR-CBOE-78-30), (SR-MSE-78-26), (SR-PSE-78-17), (SR-Phlx-78-18).

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that the American Stock Exchange, Inc. ("Amex"); the Chicago Board Options Exchange, Inc. ("CBOE"); the Midwest Stock Exchange, Inc. ("MSE"); Pacific Stock Exchange Inc. ("PSE"); and the Philadelphia Stock Exchange, Inc. ("Phlx"), filed with the Commission copies of proposed rules changes which, for a four-month trial period, would extend the trading hours for options by 10 minutes until 4:10 p.m. (e.s.t.). The extension of the options trading hours will continue from October 23, 1978, through February 28, 1979. During the trial period, those exchanges which presently conduct daily closing rotations will not conduct daily closing rotations and have suspended their rules and procedures applicable thereto.[1]

The Commission finds that the proposed uniform extension of options trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, section 6 of the Act, which requires, among other things, that the rules of national securities exchanges be designed to promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; protect investors and the public interest; and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has approved the uniform extension of the options trading hours at this time, in lieu of daily closing rotations, in part because of its concern that the current prohibition against adjusting, canceling or replacing existing orders on the book, or entering new orders in the book during daily closing rotations may not be in the public interest or consistent with the protection of investors. The Commission also is concerned that the current disparity in closing procedures among the options exchanges may not be consistent with the maintenance of fair and orderly markets in exchange listed options or in the securities underlying such options. During this trial period, therefore, the Commission will seek to determine what daily options closing procedures on national securities exchanges would best serve the public interest and insure the maintenance of fair and orderly markets. In particular, during this 4-month period the Commission intends to address, and invites comment upon, the following issues:

(1) Whether daily closing rotations as currently conducted on the CBOE, MSE and PSE are in the public interest and consistent with the protection of investors;

(2) Whether there is a legitimate public interest to be served by permanently extending options trading hours beyond the close of the principal exchange markets in the underlying securities (4 p.m. (e.s.t.)); and

(3) Whether the purpose of the Act, and in particular the goal of maintaining fair and orderly markets in options and their underlying securities, would best be served by a uniform 4 p.m. (e.s.t.) close of options trading.

Since the proposed rules changes referenced above provide that the extension of exchanges' options trading hours is to continue for a 4-month period only, if the trail period is not extended the use of daily closing rotations may again begin on the CBOE, PSE, and MSE after that period. During the 4-month trial period, therefore, the Commission may initiate steps to eliminate such practices through the exercise of the Commission's broad rulemaking authority under the Act, particularly section 9 thereof, to mandate a uniform closing time and/or uniform closing procedures for all options exchanges.[2]

Each of the exchanges has agreed to monitor, during the 4-month trial period, the 10-minute extension of trading beyond 4 p.m. (e.s.t.), and will report the results of their monitoring efforts to the Commission.[3] At the end of this trial period, if the options exchanges seek Commission approval for a continuation of extended trading hours, either on a temporary or permanent basis, the Commission will expect the exchanges to demonstrate that such an extension is consistent with the purposes of the Act.

The Commission finds good cause for approving the proposed rules changes prior to the thirtieth day after the date of publication of notice of filing thereof. As noted above, the Commission is concerned that daily closing rotations as currently conducted, as well as the disparate closing procedures among the options exchanges, may not be in the public interest or consistent with the maintenance of fair and orderly markets. The Commission believes that the uniform extension of the options trading hours serves as an interim solution to the problems of nonuniform closing procedures and the resulting closing time disparities, and offers a 4-month period during which the Commission can explore the issues underlying its concerns. Further, the 4-month trial period will provide interested persons an opportunity to submit their views on the issues set forth above.

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[1] A daily closing rotation is a procedure by which a board broker or order book official calls for bids and offers from the crowd for each option series in his or her assigned classes, one series at a time, after the close of trading. During the closing rotation, new orders may not be placed on the book nor may existing book orders be canceled, adjusted or replaced. Exchange members on the trading floor, however, may trade against the book. Amex and Phlx do not currently conduct daily closing rotations—options trading on Amex and Phlx ceases at 4 p.m. (e.s.t.). Thus, options trading on the CBOE, PSE and MSE, which conduct closing rotations after 4 p.m., currently continues after the close of options trading on the Amex and Phlx.

[2] The Commission also has authority pursuant to other sections of the Act to eliminate such practices.

[3] Among the factors which the exchanges will consider in monitoring the extension of trading hours are:

(1) The extent to which firms are permitting the entry of customers' orders after 4 p.m. (e.s.t.);

(2) The extent to which public news announcements made at or after 4 p.m. (e.s.t.) affect the options market;

(3) The extent to which agency orders and principal orders for options are executed during the last 10 minutes of trading;

(4) The volume of options transactions executed during the final 10 minutes of trading;

(5) The extent to which options trading after the close of the principal exchange markets in underlying securities enables the last quotation and/or last sale in the options market to reflect the last sale of the underlying stock; and

(6) The extent to which having the last sale and/or the last quotation in the options market reflect the last sale in the underlying security serves the public interest and to maintain fair and orderly markets in both options and their underlying securities.

Publication of notice of the proposed rules changes is expected to be made in the FEDERAL REGISTER during the week of October 23, 1978. Interested persons are invited to submit written data, views and arguments concerning the proposed rules changes and the three issues listed above within 45 days from the date of publication of the submission in the FEDERAL REGISTER. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File Nos. SR-Amex-77-22; SR-CBOE-78-30; SR-MSE-78-26; SR-PSE-78-17; and SR-Ph 1x-78-18.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rules changes which are filed with the Commission, and all written communications relating to proposed rules changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rules changes referenced above be, and they are hereby, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30168 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 20734; 70-5513]

COLUMBIA GAS SYSTEM, INC. AND COLUMBIA ALASKAN GAS TRANSMISSION CORP.

Post-Effective Amendment Regarding Participation in Gas Pipeline Project

OCTOBER 18, 1978.

Notice is hereby given that Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Del. 19807, a registered holding company, and Columbia Alaskan Gas Transmission Corp. ("Columbia Alaskan"), 20 Montchanin Road, Wilmington, Del. 19807, a subsidiary of Columbia, have filed with this commission a post-effective amendment to the application in this proceeding pursuant to Sections 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45(b)(1) and 50(a)(3) promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated August 16, 1974 (HCAR No. 18534), Columbia Alaskan was authorized to participate in the Northern Border Pipeline Company General Partnership Agreement dated as of April 15, 1974 ("Northern Agreement"), which Columbia Alaskan had entered into along with five other companies. Columbia Alaskan now seeks approval of an agreement which substitutes a new partnership agreement for the Northern Agreement and gives Columbia Alaskan the option to become a member of such new partnership. The Northern Border project was organized to constitute and operate a natural gas pipeline representing the second leg of an overall project designed to bring substantial volumes of gas from the Arctic regions of Alaska and Canada down to markets in the lower forty-eight States of the United States, including those markets in Columbia's service area. The first leg of the project contemplates the transmission of gas from Purdhoe Bay, Alaska, to the Alaskan-Canadian border.

The second leg, the Northern Border Project, is intended to extend from a point on the United States Canadian border near Monchy, Saskatchewan, to a point near Dwight, Ill. Two of the parent companies of the six companies who were partners under the Northern Agreement, Northern Natural Gas Co. ("Northern Natural") and Panhandle Eastern Pipeline Company ("Panhandle") wish to construct and operate facilities from Monchy, Saskatchewan, to a point near Ventura, Iowa, in order to transport and deliver natural gas produced in the Province of Alberta, Canada, independent of any subsequent arrangements for the delivery of gas from Prudhoe Bay (this early construction is hereinafter referred to a "Prebuilding"). The other four partners under the Northern Agreement, including Columbia Alaskan, do not desire to participate in the Prebuilding but do wish to retain their option to join the project subsequent to the Prebuilding if and when pipeline facilites are built to transport gas from Prudhoe Bay to Monchy, and to expand the facilities from that point on to Dwight, Ill.

To effectuate the foregoing, all of the parties to the Northern Agreement have executed an Amendment and Agreement dated August 1, 1978, which effectively terminates the Northern Agreement and substitutes for it a substantially similar agreement called the Northern Border Pipeline Co. General Partnership Agreement, effective as March 9, 1978 ("Successor Partnership Agreement"). Simultaneously with execution of the successor Partnership Agreement, four companies, comprising Northern Plains Natural Gas Company and Pan Border Gas Co., two of the original signatories to the Northern Agreement and subsidiaries, respectively, of Northern Natural and Panhandle, and two new companies, Northwest border Pipeline Co., a subsidiary of Northwest Energy Corp., and United Mid-Continent Pipeline Co., a subsidiary of United Gas Pipe Line Co., have joined as partners in the new agreement. Under such agreement, if an when Prebuilding occurs, then at such time as the incremental pipeline facilities required to complete the overall Project for the transmission of gas from Prudhoe Bay to Dwight, Ill. are to constructed, Columbia Alaskan shall have the option to become a partner in the Successor Partnership Agreement, standing in place of the Northern Agreement.

In all other respects the proposed transactions remain the same. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 20, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as now amended or as it may be further amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30169 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 10446; 811-1756]

FUND FOR MUTUAL DEPOSITORS INC.

Filing of Application of the Act for an Order Declaring That Fund for Mutual Depositors Inc., Has Ceased To Be an Investment Company.

OCTOBER 19, 1978.

Notice is hereby given that Fund for Mutual Depositors Inc. ("Applicant"), 200 Park Avenue, New York, N.Y. 10017, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on August 4, 1977, and an amendment thereto on August 21, 1978, pursuant to section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant, a New York corporation, registered under the Act on November 6, 1968. The application states that on June 17, 1977, at its annual meeting of shareholders, holders of more than two-thirds of issued and outstanding shares of capital stock of the Applicant approved an Agreement and Plan of Reorganization (the "Agreement") which provided for the sale by the Applicant of substantially all of its assets to Scudder, Stevens & Clark Common Stock Fund, Inc. ("Scudder Fund"), a Massachusetts corporation and a diversified, open-end management investment company registered under the Act, in exchange for shares of the capital stock of Scudder Fund.

The application further states that the above sale of the Applicant's assets was consummated on June 29, 1977, and that pursuant to the Agreement, Scudder Fund issued 1,522,710 shares of its capital stock to the Applicant, which represented an exchange ratio of 0.8249482 of Scudder Fund stock for each share of the Applicant's stock. These Scudder Fund shares have been distributed to the shareholders of the Applicant on a pro-rata basis.

Furthermore, the Applicant states that on June 29, 1977, it filed an appropriate Certificate of Dissolution with the State of New York and that it is currently engaged in no business activity other than those procedures necessary for its dissolution and liquidation and is not and does not hold itself out as being engaged, and does not propose to engage, in the business of investing, re-investing, owning, holding or trading in securities or in the business of issuing face-amount certificates of the installment type or securities, and has no such certificates or securities outstanding. The Applicant specifically states that it currently has no assets other than certain litigation proceeds described below, no liabilities adequate provision for payment of which has not been made, and no pending administrative proceedings or litigation (other than the class action described below) outstanding.

Applicant finally asserts that it is a member of the class of plaintiffs in *In Re Pennsylvania Life Company Securities Litigation* (MDL Docket No. 183-R), a class action instituted in the United States District Court for the Central District of California ("District Court") on behalf of certain purchasers (the "Class") of the common stock of Pennsylvania Life Co. ("PLC"). In connection with the acquisition by Scudder Fund of substantially all the assets of Applicant, the Applicant retained all rights under its claim in the PLC litigation. Pursuant to the terms of a settlement approved by the District Court, the Applicant received in June 1978, $5,980 principal amount out of an aggregate of $3,400,000, of 10 percent debentures due April 29, 1997, created by PLC and distributed to members of the Class, as well as $607.53 of accrued interest thereon. The Applicant states that it intends to sell the debentures as soon as a sale may be arranged for fair value, and in any event prior to June 30, 1979. The Applicant asserts that, insofar as it has been able to determine, no public market for the debentures has yet developed; and based on this and other factors it does not anticipate realizing from the sale of the debentures anything materially in excess of their $5,980 face value. It further asserts that the cost of making a distribution of the proceeds from a sale of the debentures to the approximately 4,100 persons who were shareholders of the Applicant immediately prior to its dissolution would either exceed the amount available for distribution or account for so large a portion of the available amount as to cause the amount distributed to be *de minimis*. Therefore, the Applicant has decided to apply all proceeds from such sale for proper nonreorganization corporate purposes as it deems appropriate, including payment of taxes, expenses of preparing and filing Federal tax returns, expenses in connection with a final audit, ongoing regular operational expenses, and expenses incurred in connection with the recovery and disposition of the debentures.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 13, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that the be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneoulsy with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30170 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 20735; 70-6216]

MISSISSIPPI POWER CO.

Proposed Issuance and Sale of First Mortgage Bonds

OCTOBER 18, 1978.

Notice is hereby given that Mississippi Power Co. ("Mississippi"), P.O. Box 4079, Gulfport, Miss. 39501, an electric utility subsidiary of the Southern Co., a registered holding company, has filed an application with this Commission pursuant to the Public Utility

Holding Company Act of 1935 ("Act"), designating sections 6(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Mississippi proposes to issue up to $10,000,000 principal amount of its first mortgage bonds of a series having a term of not less than five years nor more than 30 years ("new Bonds"), and to sell the new Bonds at competitive bidding for the best price obtainable but for a price to Mississippi of not less than 98 percent nor more than 101¾ percent of the principal amount thereof, plus accrued interest.

The new Bonds will be issued under the Indenture dated as of September 1, 1941, between Mississippi and Morgan Guaranty Trust Co. of New York, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by a Supplemental Indenture to be dated as of December 1, 1978.

It is difficult to determine, under present bond market conditions, whether it would be more advantageous to Mississippi to sell new Bonds having a 30-year or some shorter term. It is proposed, therefore, that Mississippi decide on the term of the new Bonds after the date of public invitation for proposals and then notify prospective bidders by telephone, confirmed in writing, of its decision, not less than 72 hours prior to the time of the bidding. Mississippi proposes to use the proceeds from the sale of the new Bonds, along with other funds, in financing its 1978 construction costs, estimated at July 1978, to be $42,597,000, and to reduce notes payable.

A statement of fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, no later than November 20, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that they be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30171 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 15243; SR-MSRB-78-10]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Amended Proposed Rule Change

OCTOBER 19, 1978.

On June 15, 1978, the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue NW., Washington, D.C. 20036, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change. That proposed rule change was amended by the MSRB on August 25, 1978. The amended proposed rule change would alter the MSRB's interdealer uniform practice rule, MSRB rule G-12, to provide that delivery of municipal securities for which a notice of call has been published for less than the entire issue on or prior to the delivery date, as opposed to trade date, does not constitute good delivery unless the securities are identified as "called" at the time of trade.

Notice of the amended proposed rule change together with the terms of substance of the amended proposed rule change was given by publication of Commission Releases (Securities Exchange Act Release No. 14879 (June 22, 1978) and Securities Exchange Act Release No. 15137 (September 7, 1978)) and by publication in the FEDERAL REGISTER (43 FR 28275 and 43 FR 41110 (1978)). Although no comments with respect to the proposed rule change were received by the Commission, the MSRB received one comment letter. In response to that letter the MSRB amended the proposed rule change to cover all notices published on or prior to the delivery date, rather than those published prior to that date.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30172 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 15245; SR-NYSE-78-49]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

OCTOBER 19, 1978.

On August 21, 1978, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend NYSE rules 301 and 325 to permit a member, whose membership is financed by his member organization pursuant to an a-b-c agreement and who ceases to be associated with the financing member organization, to transact business as an individual member on the floor during any period allowed for the exercise of the following options. Upon termination of an a-b-c agreement, a member must: (a) Retain the membership and pay the member organization the amount necessary to purchase another membership; (b) sell the membership and pay the proceeds to the member organization; or (c) transfer the membership to a person designated by the member organization for a nominal consideration.

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. 15130, September 6, 1978) and by publication in the FEDERAL REGISTER (43 FR 41116, September 14, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change be-

tween the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to registered national securities exchanges and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30173 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 15244; SR-NYSE-78-47]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

OCTOBER 19, 1978.

On August 21, 1978, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, N.Y. 10005, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend NYSE Rules 312 and 314 to extend the permitted period for retention of member organization status, following the death of the sole qualifying member, from 60 days to 90 days, and to expand the provisions which would be applicable in any situation where the sole qualifying member ceases to be associated with the member organization.

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. 15125, September 1, 1978) and by publication in the FEDERAL REGISTER (43 FR 41116, September 14, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30174 Filed 10-24-78; 8:45 am]

[8010-01-M]

[Release No. 20736; 70-6055]

SYSTEM FUELS, INC., ET AL.

Post-Effective Amendments Regarding Financing Arrangements Related to the Purchase of Fuel by a Nonutility Subsidiary for Use by the Operating Companies

OCTOBER 19, 1978.

In the matter of System Fuels, Inc., 225 Baronne St., New Orleans, La. 70112; Arkansas Power & Light Co., First National Building, Little Rock, Ark. 72203; Louisiana Power & Light Co., 142 Delaronde St., New Orleans, La. 70174; Mississippi Power & Light Co., Electric Building, Jackson, Miss. 39205; New Orleans Public Service Inc., 317 Baronne St., New Orleans, La. 70112.

Notice is hereby given that Arkansas Power & Light Co. ("Arkansas"), Louisiana Power & Light Co. ("Louisiana"), Mississippi Power & Light Co. ("Mississippi"), and New Orleans Public Service Inc. ("NOPSI") (collectively referred to as "Operating Companies"), all public utility subsidiary companies of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and System Fuels, Inc. ("SFI"), a jointly-owned nonutility subsidiary company of the Operating Companies, have filed post-effective amendments to their declaration in this proceeding pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated December 30, 1976, the Commission approved an extension of the period through December 31, 1977, during which System Fuels, Inc. ("SFI") is authorized to make borrowings from the Operating Companies, parent companies of SFI, to finance its fuel supply business. (HCAR No. 19835). In that proceeding, SFI committed itself to endeavor to obtain funds from external sources under arrangements advantageous to SFI and the Middle South Utilities System, in lieu of borrowing from the Operating Companies, to meet SFI's expenditure requirements.

By order dated November 7, 1977, the Commission authorized SFI to make borrowings, through the sale of bankers' acceptances under an Acceptance Facility Line of Credit Agreement ("Acceptance Agreement") with Citibank, N.A., New York, New York ("Bank"), to finance a portion of its requisite inventory of fuel oil through 1978. Pursuant to the Acceptance Agreement, SFI may borrow and reborrow through November 18, 1978, up to a maximum aggregate amount not to exceed at any one time outstanding the lesser of $25,000,000 or an amount equal to 50 percent of the fair market value of SFI's fuel oil inventory then in storage at specified locations (the "Acceptance Base"). As of September 30, 1978, SFI's borrowings from the Bank under the Acceptance Agreement aggregated $25,000,000.

To assure the availability to the Operating Companies and to Arkansas-Missouri Power Company, the other operating subsidiary of Middle South, of an adequate supply of fuel oil through 1979, SFI presently estimates that it will be necessary to maintain an inventory varying between 5,900,000 and 7,600,000 bbls., valued at as much as $83,700,000. Such requirements will vary because of seasonal factors, availability of natural gas and other changes in conditions. To finance a portion of its requisite inventory of fuel oil through 1979, SFI proposes to enter into an amendment of the Acceptance Agreement ("Amendment Agreement") which will provide for a 1-year extension, through November 18, 1979, of the period during which SFI may effect borrowings and reborrowings from the Bank thereunder.

The Amendment Agreement will provide for a modification of the provisions in the Acceptance Agreement relating to the rate at which the Bank will discount any Draft presented to it by SFI for acceptance so that the Bank will pay to SFI in immediately available funds on the date of such acceptance an amount equal to the face amount of such Draft less a discount equal to (a) the prevailing bid rate in effect in the bankers' acceptance market on the date of acceptance of such Draft for acceptances by the Bank of commercial drafts or bills ineligible for discount with Federal Re-

serve Banks and having he same maturity as such Draft, multiplied by (b) the face amount of such Draft; provided that if during the extended term of the Acceptance Agreement the Drafts to be accepted by the Bank thereunder are at any time deemed to be eligible for discount with Federal Reserve Banks, the discount rate will accordingly be premised upon that applicable to eligible acceptances.

The Amendment Agreement will also provide for a modification of the provisions in the Acceptance Agreement relating to the acceptance charge payable by SFI to the Bank with respect to Drafts accepted and discounted by the Bank so that SFI will pay to the Bank on the date of acceptance of any Draft an acceptance charge of 1.40 percent per annum of the face amount of such Draft for the period thereof. The acceptance charge specified in the Amendment Agreement may be adjusted (1), subject to any necessary approvals of the Commission under the Act, to reflect a change in the regulations adopted under the Federal Reserve Act mandating a change in the amount of reserves required to be maintained by the Bank with respect to obligations arising from the creation of bankers' acceptances which are ineligible for discount with Federal Reserve Banks, any such adjustment to be in such amount as SFI and the Bank shall thereafter agree upon, and (2) automatically from 1.40 to 1 percent per annum with respect to Drafts accepted and discounted by the Bank which are deemed eligible for discount with Federal Reserve Banks. Based upon the prevailing bid rate of 9.35 percent in effect as of October 16, 1978, for 90-day commercial drafts or bills ineligible for discount with Federal Reserve Banks, and after giving effect to the Acceptance Charge of 1.40 percent per annum payable as to Drafts of SFI accepted and discounted by the Bank, SFI estimates that its cost of money in respect of the proposed borrowings under the Acceptance Agreement, as amended by the Amendment Agreement, would be 10.97 percent per annum.

In all other respects the proposed transactions remain the same.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 13, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendments to the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-30175 Filed 10-24-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0140]

DADELAND CAPITAL INVESTMENT CORP.

Issuance of License

On July 17, 1978, a Notice was published in the FEDERAL REGISTER (43 FR 30634) stating that an application had been filed by Dadeland Capital Investment Corp., 7545 North Kendall Drive, Miami, Fla. 33156, with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (SBIC).

Interested parties were given until the close of business August 1, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, the SBA issued License No. 04/04-0140 to Dadeland Capital Investment Corp., to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 18, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-30079 Filed 10-24-78; 8:45 am]

[8025-01-M]

[License No. 09/09-0210]

JERMYN VENTURE CAPITAL CORP.

Issuance of Small Business Investment Company License

On June 8, 1978, a notice of application for a license as a small business investment company was published in the FEDERAL REGISTER (Vol. 43, No. 111) stating that an application had been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978)), for a license to operate as a small business investment company (specializing in the financing of the production and distribution of motion pictures) by Jermyn Venture Capital Corp., 190 North Canon Drive, Suite 400, Beverly Hills, Calif. 90210.

Interested parties were given until the close of business on June 23, 1978, to submit their comments. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and facts with regard thereto, SBA issued License No. 09/09-0210, to Jermyn Venture Capital Corp. on October 18, 1978.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 19, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-30077 Filed 10-24-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1536]

CALIFORNIA

Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Orange County and adjacent counties within the State of California constitute a disaster area, because of damage resulting from landslides beginning about October 2, 1978. Eligible persons, firms and organizations may

file applications for loans for physical damage until the close of business on December 8, 1978, and for economic injury until the close of business on July 9, 1979, at:

Small Business Administration, District Office, 350 South Figueroa Street, 6th Floor, Los Angeles, Calif. 90071

or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008.)

Dated: October 17, 1978.

A. VERNON WEAVER,
Administrator.

[FR. Doc.78-29992 Filed 10-24-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1537]

ILLINOIS

Declaration of Disaster Loan Area

DeKalb and Kane counties and adjacent counties within the State of Illinois constitute a disaster area as a result of damage caused by heavy rains and flash flooding which occurred on September 13-17, 1978. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 18, 1978, and for economic injury until the close of business on July 17, 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 17, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-29993 Filed 10-24-78; 8:45 am]

[8025-01]

REGION V ADVISORY COUNCIL

Change of Meeting Date

The Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, Ind., has changed the date of its public meeting from 10:30 a.m. e.s.t., on Wednesday, November 15, 1978, to 10:30 a.m. e.s.t. on Thursday, November 16, 1978, in the Midtown Ramada, 1530 North Meridian Street, Indianapolis, Ind., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Robert J. Gastineau, Public Information Officer, U.S. Small Business Administration, Federal Building, 5th Floor, 575 North Pennsylvania Street, Indianapolis, Ind. 46204, 317-331-7041.

Dated: OCTOBER 19, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-29994 Filed 10-24-78; 8:45 am]

REGION IX ADVISORY COUNCIL EXECUTIVE BOARD

Public Meeting

The Small Business Administration Region IX Advisory Council Executive Board will hold a public meeting at 9:30 a.m., on Monday, November 20, 1978, at 450 Golden Gate Avenue, 15th Floor, Multi-Purpose Room 15347, San Francisco, Calif., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call JoAnn Semones, Regional Public Information Officer, U.S. Small Business Administration, 450 Golden Gate Avenue, 15th Floor, Box 36044, San Francisco, Calif. 94102, 415-556-0860.

Dated: October 19, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-29996 Filed 10-24-78; 8:45 am]

[8025-01-M]

REGION X ADVISORY COUNCIL EXECUTIVE BOARD

Public Meeting

The Small Business Administration Region X Advisory Council Executive Board will hold a public meeting from 9 a.m. to 12:30 p.m. on Wednesday, November 15, 1978, in the Seattle-First Board Room, Dexter-Horton Building, Seattle, Wash., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call Larry C. Gourlie, Regional Director, U.S. Small Business Administration, Dexter-Horton Building, 5th Floor, 710 Second Avenue, Seattle, Wash. 98104, 206-399-5676.

Dated: October 19, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc 78-29995 Filed 10-24-78; 8:45 am]

[8025-01-M]

[License No. 03/03-0022]

SHARON SMALL BUSINESS INVESTMENT CO.

Application

Notice is hereby given that Sharon Small Business Investment Co. (SSBIC), 385 Shenango Avenue, Sharon, Pa. 16146, a Federal licensee under the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.), has filed an application with the Small Business Administration purusant to section 312 of the Act and covered by section 107.1004(b) (1) and (4) of the SBA's regulations governing small business investment companies (SBIC) (13 FR 107.1004 (1978)), for approval of a conflict of interest transaction falling within the scope of the above sections.

Subject to such approval SSBIC proposes to provide funds to Geneva Golden Dawn, Inc. (Geneva), 669 East Main Street, Geneva, Ohio 44041.

The proposed financing is brought within the purview of section 107.1004(b) (1) and (4) of the regulations because one of the principal stockholders of Geneva is a former employee of the parent company of the SBIC and therefore is considered an associate of SSBIC as defined by section 107.3 of the regulations. The individual involved is Mr. William F. Johnson.

The transaction also falls within section 107.1004(b)(4) , in that the licensee's financing will provide funds, or release other funds, to discharge monetary obligations of Geneva to licensee's parent, as sublessee of real estate from it and the purchase of fixtures and equipment from the parent.

Notice is hereby given that any interested person may not, later than November 6, 1978, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 12, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29917 Filed 10-24-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

JOINT COMMITTEE FOR AGRICULTURAL DEVELOPMENT OF THE 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 sixteenth meeting of the Joint Committee on Agricultural Development (JCAD) of the Board for International Food and Agricultural Development (BIFAD) on November 13-16, 1978.

The purpose of the meeting is to discuss: proposals for restructuring the JCAD monthly meetings; the implications for the BIFAD of the proposed establishment of an International Service for Agricultural Research by the Consultative group on International Agricultural Research (CGIAR); the development of a source book of American universities qualified to provide training in the different agricultural areas of specialization; and to consider other business brought before the Committee.

The JCAD will meet on November 13, 14, and 16 in the form of Regional Work Groups (RWGs): for Asia on November 13, 1978, from 10 a.m. to 4 p.m. in Room 206, Rosslyn Plaza Building, 1601 North Kent Street, Rosslyn, Va.; for Latin America on November 14, 1978, from 9:30 a.m. to 4 p.m. in Room 2242, New State Department Building; for Africa on November 16, 1978, from 9 a.m. to 1 p.m. in the Stockholm Room, Chase Park Plaza Hotel, 212 North Kings Highway, St. Louis, Mo.; and for the Near East on November 16, 1978, from 10 a.m. to 4 p.m. in Room 6484, New State Department Building. The JCAD meeting on November 15, 1978, will convene from 9:30 a.m. to 5 p.m. in the Stockholm Room of the Chase Park Plaza Hotel, 212 North Kings Highway, St. Louis, Mo. 63108. The entire four-day meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. Carl E. Ferguson, Office of Title XII Coordination and University Relations, Development Support Bureau, is designated 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 Development, State Department, Washington, D.C. 20523, or telephone him at 703-235-9054.

Dated: October 18, 1978.

CARL E. FERGUSON,
A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Development, Board for International Food and Agricultural Development.

[FR Doc. 78-30103 Filed 10-24-78; 8:45 a.m.]

[4710-01-M]

Office of the Secretary

[Public Notice CM-8/119]

OVERSEAS SCHOOLS ADVISORY COUNCIL

Meeting

The Overseas Schools Advisory Council, Department of State, will hold its annual meeting on Thursday, December 14, 1978, 9:30 a.m., in Conference Room 1408, Department of State Building, Washington, D.C.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Participants.

II. Greetings from the Department of State.

III. Report of Executive Committee Meeting of June 8, 1978.

IV. Results of Surveys and Reports Relating to Local Fund-Raising Activities Conducted by the Schools:

A. The Role of Fund-Raising Handbook in Planning and Conducting Fund-Raising Programs;

B. Requests and Recommendations for Additional Council Assistance; and

C. Regional School Associations Meetings and Activities.

V. Status Report and Review of Council's Fund-Raising Activities 1968-1978.

VI. Activities Relating to Council's Second Phase:

A. Letter to 1300 U.S. Corporations and Foundations, Enclosing Directory of American-Sponsored Overseas Schools, a Sample of Updated School Fact Sheets and a List of U.S. Firms Represented on School Boards; and

B. Annual Letter to Heads of U.S. Corporations and Foundations Regarding the Needs of the Overseas Schools and Advisability for Interested Participation of Their Overseas Employees in School Activities.

VII. Other Business.

For purposes of fulfilling building security, members of the public desiring to attend the meeting should call Ms. Judy Knott, Office of Overseas Schools, Department of State, Washington, D.C., Area Code 703-235-9600, prior to December 14. The public may participate in discussion at the Chairman's instructions.

Dated: October 16, 1978.

ERNEST N. MANNINO,
Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 78-30102 Filed 10-24-78; 8:45 am]

[4710-01-M]

[Public Notice CM-8/121]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea (SOLAS), a part of the Shipping Coordinating Committee, will conduct an open meeting at 1:30 p.m. on November 16, 1978, in Room 8442 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the Twentieth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London on March 26-30, 1979. In particular, the working group will discuss the following topics:

Survival craft radio equipment;
Operational requirements for future EPIRB's;
Operational standards for shipboard radio equipment; and
Maritime distress system.

Requests for further information should be directed to Lieutenant R. F. Carlson, U.S. Coast Guard (G-OTM/74), Washington, D.C. 20590, telephone 202-426-1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

OCTOBER 18, 1978.

[FR Doc. 78-30101 Filed 10-24-78; 8:45 am]

[4810-25-M]

DEPARTMENT OF THE TREASURY

MONETARY OFFICES

Financial Recordkeeping and Reporting of Currency and Foreign Transactions; Modification of Reporting Requirement

Notice is hereby given that a person who, under the provisions of 31 CFR 103.24, would otherwise be required to file a Treasury Department Form 90-22.1, Report of Foreign Bank and Financial Accounts, concerning his ownership or control over foreign financial accounts, need not make such a report if the accounts had an aggregate maximum value of $1,000 or less.

The above exemption from the reporting requirement is designed to reduce unnecessary paperwork occa

sioned by Federal reporting requirements, while insuring that the purpose and objectives of the statute are carried out. It is authorized by sections 241 and 242 of the Currency and Foreign Transactions Reporting Act, 84 Stat. 1124 and 31 CFR 103.45.

Dated: October 19, 1978.

BETTE B. ANDERSON,
Under Secretary.

[FR Doc. 78-30113 Filed 10-24-78; 8:45 am]

[4810-22-M]

Office of the Secretary

CERTAIN CARBON STEEL PLATES FROM VARIOUS COUNTRIES

Antidumping Proceeding Notice

AGENCY: Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that, pursuant to information developed under the "Trigger Price Mechanism" for certain steel mill products, an antidumping investigation is being initiated for the purpose of determining whether imports of carbon steel plates from various countries are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United Stetes are less than the prices in the home market.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald W. Eiss, U.S. Treasury Department, Office of Tariff Affairs, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220, telephone 202-566-8256.

SUPPLEMENTARY INFORMATION: On December 6, 1977, the President approved implementation by the Treasury Department of a "Trigger Price Mechanism" ("TPM") applicable to importations of certain steel mill products. As stated in the FEDERAL REGISTER of December 30, 1977 (42 FR 65214), the TPM consists of four major parts: (1) the establishment of trigger prices for steel mill products imported into the United States; (2) the use of a Special Summary Steel Invoice ("SSSI") applicable to imports of all steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of steel mill products exported to the United States, and (b) the condition of the domestic steel industry; and (4) where appropriate, the expedited initiation and disposition of proceedings under the Antidumping Act of 1921 with respect to imports below the Trigger Prices.

The Trigger Price Mechanism is a monitoring device established by the Treasury Department to determine if basic steel mill products may be sold to the United States at less than fair value. Actual C.I.F. transaction prices on sales to the United States are compared to trigger prices established by the Treasury Department. Prices below the trigger prices are considered to represent potential sales at less than fair value since trigger prices reflect the estimated cost of production of the world's most efficient steel industry.

Information has been developed from analysis of the SSSI's submitted, indicating that imports of certain carbon steel plates, sold by the companies listed below, have been entering the Unites States at prices below the applicable "Trigger Prices". Such information indicates the possibility that the subject carbon steel plates are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.), by the following producers and/or sellers of this merchandise, and in those instances where the seller did not also produce the exported product, the manufacturers supplying the firms listed below:

Empresa Nacional Siderurgica, S.A.
Velasquez, 134
Madrid-6, Spain

"Stahlexport" Przedsiebiorstwoa
Handlu Zagranicznego
Katowice, Plebiscytowa 36
Poland

China Steel Corp.
(Taiwan)

The addresses listed above are for identification purposes only and do not necessarily reflect the countries from which those companies have made sales at less than "trigger prices". For purposes of this investigation, sales by those companies controlling, controlled by, or under the common ownership of each listed company in the same country, will be subject to any Finding of Dumping ultimately issued.

Customs' information indicates margins of dumping up to 48.5 percent based upon: the comparison of export prices to the U.S. with prices to third countries, as reflected by prices applicable to imports of this merchandise into the member states of the European Communities, for exports from Spain; and the comparison of export prices to the U.S. with the foreign market value, as reflected by prices applicable to this merchandise sold for export to the European Community by Spanish producers and set by the Commission of the European Communities for such imports, with respect to this merchandise imported from Poland. For this latter comparison of relevant pricing, Spain is considered to constitute a country at a comparable level of economic development within the meaning of § 153.7, Customs Regulations (19 CFR 153.7) as amended by 43 FR 35262, pertaining to merchandise from state-controlled-economy countries.

With respect to goods exported from the Republic of China, export prices to the United States were compared to the data developed under the Trigger Price Mechanism (TPM) for carbon steel plates contained in AISI category 5. Data regarding "trigger prices" for this product were utilized due to the lack of readily available data regarding Taiwanese home market prices, prices at which this product is sold to third countries by companies in Taiwan or the cost of producing carbon steel plate in Taiwan.

In establishing and administering the TPM, substantial evidence has been developed concerning injury and likelihood of injury to the United States steel industry from sales of foreign steel at less than its fair value. The sector of carbon steel plate seems particularly vulnerable. Domestic consumption increased in 1977 campared to 1976 by 10.3 percent, and in the first 8 months of 1978 by 21.5 percent compared to the same period in 1977. Based on U.S. Census statistics during those same time frames, imports have increased, respectively, 32.6 percent and 75.9 percent. During the first 8 months of 1978, total imports of carbon steel plate accounted for 24 percent of total U.S. domestic consumption. Evidence available indicates that imports from the three countries in which the above-named companies are situated, have increased their shares of this market in both absolute terms and in terms of market penetration. Imports from these companies, occurring at prices less than the relevant trigger prices have been significant, accounting for roughly 25 percent of total imports of this product from these three countries during the period May-August 1978. Accordingly, it has been determined that a preliminary referral to the International Trade Commission pursuant to section 201(c)(2) of the Antidumping Act is not required.

Having conducted a summary investigation pursuant to § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify information and to obtain the facts necessary to enable the Secre-

tary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value. The inquiry will be conducted on an expedited basis.

Standard questionnaires will be promptly presented by the Customs Service to all appropriate parties. Responses to those sections of the questionnaire relating primarily to price data (sections A-C) must be received by the Customs Service within 21 days from the date of presentation but in no case more than 26 days after the date of publication of this notice in the FEDERAL REGISTER. Where appropriate, responses to that section of the questionnaire relating primarily to cost of production data (section D) must be received by the Customs Service within 35 days from the date of presentation but in no case more than 41 days after the date of publication in the FEDERAL REGISTER. Any responses received after the above-cited deadlines will not be considered by the Secretary in making the Tentative Determination and may not be used in making the Final Determination.

All information submitted during this investigation for which confidential treatment is requested must be accompanied (unless § 153.22(a)(2) of the Customs Regulations is applicable) by a full and descriptive nonconfidential summary in accordance with § 153.22 of the Customs Regulations (19 CFR 153.22). All information or portions of confidential submissions which are not adequately summarized will not be considered by the Secretary in detemining the question of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

OCTOBER 20, 1978.

[FR Doc. 78-30093 Filed 10-24-78; 8:45 am]

[1505-01-M]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 19]

DECISION-NOTICE

Correction

FR Doc. 78-22942, appearing at page 36557 in the issue of Thursday, August 17, is corrected as follows:

In MC 118922 (Sub-18F), second full paragraph, third column, page 36560, the seventh line should read, "to operate as a *contract carrier*, by".

[1505-01-M]

[Decisions Volume No. 30]

DECISION-NOTICE

Correction

In FR Doc. 78-26196 appearing at page 42060 in the issue of Tuesday, September 19, 1978, on page 42062, the 3d paragraph, the first line should read, "MC 104149 (Sub-205F), filed August [14, 1978 * * *]" instead of "MC 104140 (Sub-205F) [etc.]".

[1505-01-M]

[Notice No. 155]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

FR Doc. 78-24414, appearing at page 38773 in the issue of Wednesday, August 30, 1978, is corrected as follows:

1. In MC 107882 (Sub-42TA), first full paragraph, middle column, page 38774, the 11th line should read, "[Philadel-]phia, PA; Denver, CO: Stateline, Reno, NV;".

2. In MC 138438 (Sub-27TA), first full paragraph, second column, page 38775, the 11th line should read, "commercial zone to points in MD, VA, the District of Columbia".

[1505-01-M]

[Notice No. 172]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-27187, appearing at page 43808, in the issue of Wednesday, September 27, 1978, on page 43809, in the third coulumn, the first full paragraph should begin "MC 114045" instead of "MC 11445".

[7035-01-M]

[Notice No. 199]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 11, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 720 (Sub-57TA), filed August 15, 1978. Applicant: BIRD TRUCKING CO., INC., P.O. Box 227, Waupun, WI 53963. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk) from the facilities used by Ore-Ida Foods, Inc., at or near Plover, WI, to points in and east of ND, SD, NE, KS, OK, and TX. Restriction: Restricted to traffic originating at the named origin and destined to the named States. Authority sought for 180 days. Supporting shipper: Ore-Ida Foods, Inc., Owyhee Plaza, Boise, ID 83702. Send protests to: (District Supervisor) Mr. John Ryden, Interstate Commerce Commission, U.S. Federal Courthouse, 517 East Wisconsin, Room 619, Milwaukee, WI 53202.

MC 29568 (Sub-5TA), filed August 21, 1978. Applicant: ASSOCIATED TRANSFER & STORAGE CO., INC., 730 North Northlake Way, Seattle, WA 98103. Representative: Susan W. Carlson, Aiken, St. Louis & Siljeg, 1215 Norton Building, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground limestone*, in sacks, from the port of entry of the international boundary line of the United States and Canada, at or near Porthill, ID, on

the one hand, and, on the other hand, Spokane, Tri Cities, Omak, Okanogan, Vancouver, Centralia, Olympia, and Seattle, WA, and Portland, Corvallis, Eugene, Springfield, Salem, and Klamath Falls, OR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chemical Distributors, Inc., P.O. Box 10763, Portland, OR 97210. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, ICC, 858 Federal Building, Seattle, WA 98174.

MC 48441 (Sub-24TA), filed August 25, 1978. Applicant: R. M. E. INC., P.O. Box 418, Streator, IL 61364. Representative: Mr. E. Stephin Heisley, 666 11th Street NW., No. 805, Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers*, from facilities utilized by National Can Corp., at Oak Creek, WI, to points in the St. Louis, MO, commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Can Corp., 8101 West Higgins Road, Chicago, IL 60631. Send protests to: Lois Stahl, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 50866 (Sub-9TA), filed August 31, 1978. Applicant: BURLINGAME TRUCK LINE, INC., Rural Route No. 2, Scranton, KS 66537. Representative: Frederick W. Godderz, Ramskill & Godderz, First State Bank Building, Burlingame, KS 66413. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed and feed ingredients* (except in bulk in tank vehicles), from Cozad, Darr, Dakota City, Kearney, Lexington, Orleans, Odessa, Superior, and York, NE, to all points and places in the State of KS; from North Platte, Fremont, Lincoln, Weeping Water, and Omaha, NE, to all points and places west of Kansas Hwy 14 in the State of KS; also from Kansas City, MO, and St. Joseph, MO, to all counties in the State of KS and all points and places therein except the following counties: Crawford, Cherokee, Franklin, Anderson, Linn, Miami, Nemaha, Brown, Atchison, Doniphan, Jackson, Labette, Montgomery, Wilson, Neosho, Woodson, Allen, Johnson, Wyandotte, Leavenworth, Jefferson, Douglas, Riley, Pottawatomie, Geary, Morris, Chase, Lyon, Osage, and Coffey Counties, KS, from Farmland Industries, Inc., plant in Kansas City, KS, to Gothenburg, NE, for 180 days. Supporting shipper: Farmland Industries, Inc., P.O. Box 7305, 3315 North Oak Trafficway, Kansas City, MO 64116. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 256 Federal Building and U.S. Courthouse, 444 Southeast Quincy, Topeka, KS 66683.

MC 82063 (Sub-91TA), filed September 1, 1978. Applicant: KLIPSCH HAULING CO., 10795 Watson Road, St. Louis, MO 63127. Representative: W. E. Klipsch, 10795 Watson Road, St. Louis, MO 63127. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from Sedalia, MO, to all points in the United States except AK, HI, and points in the St. Louis, MO-East St. Louis, IL, commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Alcolac, Inc., 3440 Fairfield Road, Baltimore, MD. Send protests to: District Supervisor P. E. Binder, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 84739 (Sub-28TA), filed August 14, 1978. Applicant: SEVERSON TRANSPORT, INC., 624 Albion Road, Edgerton, WI 53534. Representative: Ronald J. Mastej, 900 Guardian Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic*, except in bulk, from the facilities of Hammond Plastics Midwest, Inc., at or near Owensboro, KY, to points in IN, IL, MI, MN, OH, PA, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hammond Plastics Midwest, Inc., P.O. Box 990, Owensboro, KY 42301. Send protests to: Ronald Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, WI 53703.

MC 89153 (Sub-5TA), filed August 21, 1978. Applicant: GAYLE T. McGARRY, d.b.a. EAGLE TRANSFER & STORAGE CO., P.O. Box F, Lewison, ID 83501. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Soft drinks* from Spokane, WA, to points in ID, MT, and OR. (2) *Empty cans* from Worland, WY, to Spokane, WA, for 180 days. Restriction: Restricted the transportation of traffic originating at or near destined to the facilities of Western Bottling Co., Spokane, WA. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Western Bottling Co., 4014 East Prague, Spokane, WA 99202. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, ICC, 858 Federal Building, Seattle, WA 98174.

MC 99427 (Sub-40TA), filed August 15, 1978. Applicant: ARIZONA TANK LINES, INC., P.O. Box 855, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphuric acid*, in bulk, in tank vehicles, from Inspiration and Hayden, AZ, to Blue Water, NM, for 180 days. Supporting shipper: Carlyle Chemical, Suite 2905, Fourth National Bank Building, Sixth and Boulder Streets, Tulsa, OK 74119. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 105280 (Sub-3TA), filed August 15, 1978. Applicant: CHANDLER TRANSPORT SERVICE, INC., P.O. Box 309, Fleming, CO 80728. Representative: Richard P. Kissinger, Steele Park, Suite 330, 50 South Steele Street, Denver, CO 80209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products in packages or containers*, from El Dorado, KS to points in CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Getty Refining and Marketing Co., P.O. Box 1650, Tulsa, OK 74102. Send protests to: District Supervisor, Roger L. Buchanan, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 107403 (Sub-1111TA), filed August 21, 1978. Applicant: MATLOCK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., 10 West Baltimore Avenue, Lansdowne, PA 19050. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground limestone*, in bulk and bags, from Sylacauga, AL, to New Orleans, LA, and Sneads, FL; *Lime slury*, in bulk, in tank vehicles, from Sylacauga, AL, to Savannah, Augusta, and Macon, GA, and McGehee, AR, for 180 days. Supporting shipper: Sylacauga Calcuim Products Co., P.O. Box 330, Sylacauga, AL 35150. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 107496 (Sub-1155TA), filed August 15, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregu-

lar routes, transporting: *Propellants*, in bulk, in tank vehicles, from East Chicago, IN to Franklin, KY, and Butler, PA, for 180 days. Supporting shipper: Phillips Petroleum Co., 222 East Ogden, Hinsdale, IL 60521. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 108523 (Sub-8TA), filed September 1, 1978.. Applicant: POLMAN TRANSFER, INC., Route 3, Wadena, MN 56482. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods* (except commodities in bulk) from Perham, MN to ports of entry on the United States-Canada boundary line at Portal, ND and Sweetgrass, MT for subsequent movement to points in the Provinces of Alberta and Saskatchewan, Canada, under a continuing contract or contracts with Tuffy's Division of Star Kist Foods, Inc., for 180 days. Supporting shipper: Tuffy's Division of Star Kist Foods, Inc., P.O. Box 190, Perham, MN 56573. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 109064 (Sub-33TA), filed August 15, 1978. Applicant: TEX-O-KAN TRANSPORTATION CO., INC., 3310 East Loop 820, P.O. Box 8367, Fort Worth, TX 76112. Representative: George C. Jackson, 3301 East Loop 820, P.O. Box 8367, Fort Worth, TX 76112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zinc articles*, from Tarrant County, TX to points in Tulsa County, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Boyles Galvanizing Co., P.O. Box 187, Hurst, TX 76053. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 112713 (Sub-219TA), filed August 21, 1978. Applicant: YELLOW FREIGHT TYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: David B. Schneider, P.O. Box 7270, Shawnee Mission, KS 66207. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment. Serving Longview, Tylor, Gladewater, and Kilgore, TX as intermediate and off-route points to existing regular route authority, for 180 days. Supporting shipper: There are approximately 28 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: District Supervisor, John V. Barry, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 113024 (Sub-155TA), filed August 25, 1978. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 South Du Pont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, Esq., 833 Washington Building, Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Clothing and dry goods, drugs, medicines, toilet preparations and articles, diaper liners, and materials and supplies* (except liquid commodities in tank vehicles), used in the manufacture and distribution thereof, between Dover, DE and Wilmington, MA, for the account of International Playtex, Inc., under a continuing contract or contracts with International Playtex Inc., for 90 days. Applicant has also filed an underlying ETA seeking up 90 days of operating authority. Supporting shipper: Mr. J. M. Harrison, Director of Traffic and Transportation, International Playtex, Inc., P.O. Box 631, Dover, DE 19901. Send protests to: Mr. W. L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 113624 (Sub-82TA), filed August 31, 1978. Applicant: WARD TRANSPORT, INC., P.O. Box 735, Pueblo, CO 81001. Representative: Leslie R. Kehl, 1660 Lincoln, Suite 1600, Denver, CO 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Liquified petroleum gas*, in bulk from the facilities of Northwest Pipeline Co., Igancio, CO, to Cheyenne, WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Husky Oil Co., 600 South Cherry Street, Denver, CO 80222. Send protests to: District Supervisor, Herbert C. Ruoff, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 115826 (Sub-341TA), filed August 15, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Terminal Annex, Denver, CO 80217. Representative: Howard Gore, 1960 31st Street, P.O. Box 5088, Terminal Annex, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk in tank vehicles), from Laramie, WY, to El Paso, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Packers Cold Storage, Inc., 310 East Walnut, Fullerton, CA 92623. Send protests to: H. C. Ruoff, District Supervisor, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 117119 (Sub-701TA), filed August 31, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: Martin M. Geffon, P.O Box 338, Willingboro, NJ 08046. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines, toilet preparations, and chemicals*, in vehicles equipped with mechanical refrigeration (except in bulk), from points in NY, NJ, MA, CT, to points in CA, WA, OR, NV, OK, TX, UT, MS, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Cyanamid Co., Wayne, NJ. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 118318 (Sub-35TA), filed September 1, 1978. Applicant: IDA-CAL FREIGHTLINES, INC., P.O. Drawer M, 419 West Karcher Road, Nampa, ID 83651. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by grocery and food business houses, and equipment, materials, and supplies*, used in the conduct of such business, from the facilities utilized by Boyle Midway at or near Los Angeles, CA, to points in Box Elder, Cache, Davis, Morgan, Salt Lake, Tooele, Utah, and Weber Counties, UT for 180 days. Supporting shipper: Boyle Midway, 685 3rd Avenue, New York, NY, 10017. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 118989 (Sub-202TA), filed September 1, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Rolland K. Draves, 5223 South 9th Street, Milwaukee, WI 53221. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

Containers and container components, from the facilities of Blackhawk Molding Co., Inc. located in Addison, IL to various points in the United States, except Alaska and Hawaii, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Blackhawk Molding Co., Inc., 109 Commercial Road, Addison, IL 60101. (David Anderson, Sales Manager). Send protests to: John E. Ryden, District Supervisor, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 119422 (Sub-63TA), filed August 21, 1978. Applicant: EE-JAY MOTOR TRANSPORTS, INC., 15th & Lincoln Streets, East St. Louis, IL 62204. Representative: Ernest A. Brooks II, Attorney, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Compounding asphalt*, requiring heat in transit, in bulk, in tank vehicles from the facilities of Mobil Oil Corp. at Augusta, KS to points in MO, IL, OH, and MN for 180 days. Supporting shipper: Chris Proctor, Sr., Transportation Analyst, Mobil Oil Corp., 8350 North Central Expressway, Suite 522, Dallas, TX 75206. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 119632 (Sub-77TA), filed August 25, 1978. Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Representative: John P. McMahon, Attorney at Law, George, Greek, King, McMahon & McConnaughey, 100 E. Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, (1) from Pittsburgh, PA to points in IL, IN, KY, MI, points in WV on and south of U.S. Hwy 50 not including Clarksburg, and those points in OH and south of I-70, and on and west of I-77, and (2) from Holland, MI to points in PA and west of U.S. Hwy 220, for 180 days. Supporting shipper: Heinz U.S.A., Division of, H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations-ICC, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 119700 (Sub-43TA), filed August 31, 1978. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from Dallas, TX, to points in AR, CO, KS, LA, MO, MS, NM, and OK restricted to shipments originating at the plantsite of GAF Corp., for 180 days. Supporting shipper: GAF Corp., P.O. Box 5607, Dallas, TX 75222. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 123091 (Sub-24TA), filed September 1, 1978. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, OH 44403. Representative: James Duvall, 220 West Bridge Street, Dublin, OH 43017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, hardboard, particleboard, gypsumboard, molding, and accessories* used in the installation thereof. From the plant and storage facilities of Weyerhaeuser Co. located at Chesapeake, VA to IN (on and north of Interstate 70), IL, KY, NY (on and west of State Hwy 14), MI (Lower Peninsula), OH, PA (on and west of State Hwy 219), and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Weyerhaeuser Co., 201 Dexter Street, West, Chesapeake, VA 23324. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland OH 44199.

MC 124211 (Sub-339TA), filed August 15, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, Downtown Station, Omaha, NE 68101. Representative: Thomas L. Hilt, P.O. Box 988 Downtown Station, Omaha, NE 68101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plumbing fixtures, equipment, materials and supplies, and accessories* (except commodities in bulk) from Ogden, UT to CA, OR, WA, NM, AZ, ID, MT, CO, Broadview, IL, and Dayton, TN, for 180 days. Supporting shipper: J. L. Quinn, Traffic Manager, Elkay Manufacturing Co., 2700 South 17th Avenue, Broadview, IL. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 125544 (Sub-7TA), filed August 15, 1978. Applicant: LESTER M. HAYS, 803 West Mulberry, Carlinville, IL 62626. Representative: Robert T. Lawley, Attorney, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Milk cartons*, for the account of Prairie Farms Dairy, Inc., from Sikeston, MO to Evansville, IA, and Owensboro, KY, under a continuing contract or contracts with Prairie Farms Dairy, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: F. A. Gourly, Vice President-General Manager, Prairie Farms Dairy, Inc., P.O. Box 499, Carbondale, IL 62901. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 126542 (Sub-9TA), filed August 25, 1978. Applicant: B. R. WILLIAMS TRUCKING, INC., P.O. Box 3310, Oxford, AL 36201. Representative: John W. Cooper, 200 Woodward Building, Birmingham, AL 35203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Clay in containers* from the facilities of Donoho Clay Co. in or near Anniston, AL to NY, PA, KY, MD, OH, IN, IL, MO, WI, IA, MI, TX, and WV. (2) On return materials, equipment and supplies from destination States to facilities of Donoho Clay in or near Anniston, AL, under a continuing contract or contracts with Donoho Clay Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Donoho Clay Co., P.O. Box 843, Anniston, AL. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, I.C.C., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 128133 (Sub-22TA), filed August 31, 1978. Applicant: H. H. OMPTS, INC., Route 7, Box 295, Winchester, VA 22061. Representative: Jeremy Kahn, 733 Investment Building, Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime, limestone, and limestone products*, from Strasburg, VA to points in MD, NJ, NC, PA and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Engelhard Minerals & Chemicals, Edison NJ 08817. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 133566 (Sub-122TA), filed August 25, 1978. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Charles W. Beinhauer, Suite 4959, One World Trade Center, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-*

products in vehicles equipped with mechanical refrigeration between the facilities of Lykes Bros., Inc., at or near Albany GA and points in the States of NJ, PA, NY, CT, MA, and OH, for 180 days. Supporting shipper: Lykes Bros., Inc., of Georgia, P.O. Box 427, Albany, GA 31702. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 134477 (Sub-266TA), filed August 15, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats*, (ECIB) from Oneida, NY to Mason City, IA, for 180 days. Supporting shipper: Fast Food Merchandisers, Inc., 1811 19th Street SW, Mason City, IA 50401. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135797 (Sub-142TA), filed August 21, 1978. Applicant: J. B. HUNT TRANSPORTING, INC., P.O. Box 200, Lowell, AR 72745. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by manufacturers of metal tool and utility boxes, tool chests, medical cabinets, benches, and shelves (except commodities in bulk) (A) From the facilities of Waterloo Industries, Inc., at Waterloo, IA; Sedalia, MO; Pocohantas and Walnut Ridge, AR; and the facilities of Lumidor Manufacturing, Inc. at Los Angeles, CA to points in the United States (except Alaska and Hawaii) (B) From Des Moines and Clarksville, IA; Jonesboro, AR; Independence, MO; Fort Wayne and Evansville, IA; Louisville, KY; Minneapolis, MN; Worchester, MA; Los Angeles, CA; Greenville, TN and points in IL to the facilities of Waterloo Industries, Inc., at Waterloo, IA; Sedalia, MO; and Pocohontas, AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Waterloo Industries, Inc., P.O. Box 209, Waterloo, IA; 50704. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 135797 (Sub-143TA), filed August 21, 1978. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant, P.O. Box 200, Lowell, AR 72745. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed* from Kansas City, MO to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Carnation Co., 5045 Wilshire Boulevard, Los Angeles, CA 90036. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 136318 (Sub-53TA), filed August 25, 1978. Applicant: COYOTE TRUCK LINE, INC., 5367 West 86th Street, Indianapolis, IN 46268. Representative: John T. Wirth, 1600 Broadway, 2310 Colorado State Bank Building, Denver, CO 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furnishings*, from points in MS to the facilities of Montgomery Ward in Baltimore and Landover, MD. Restrictions (1) restricted to traffic destined to the facilities of Montgomery Ward, (2) restricted to traffic moving under a continuing contract or contracts with Montgomery Ward, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Montgomery Ward, 535 West Chicago Avenue, Chicago, IL 60671. Send protest to: Interstate Commerce Commission, District Supervisor, Terrell Price, 800 Briar Creek Road, Mart Office Building, Room CC516, Charlotte, NC 28205.

MC 136553 (Sub-64TA), filed August 15, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O' Lakes Agricultural Services Division at or near Mason City, IA to points in MN, NE, ND, SD, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Land O' Lakes Agricultural Services Division, 2827 8th Ave. S., Fort Dodge, IA 50501. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 136635 (Sub-10TA), filed August 21, 1978. Applicant: UNIVERSAL CARTAGE, INC., 640 West Ireland Road, South Bend, IN 46614. Representative: Edwin J. Simcox, Suite 800, 5 East Market Street, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt liquors* (Ale, Beers, Beer tonic, Porter, Stout or Nonintoxicating Cereal Beverage) from points in CO and MO, to points in Marion County IN, for 180 days. Restriction: Commodities set forth above are restricted to transportation in refrigerated or insulated van type equipment. Further, restricted to transportation destined to the facilities of Rocky Mountain Distributors, Inc., Indianapolis, IN. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rocky Mountain Distributors, Inc., 836 Broadripple Avenue, Indianapolis, IN 46220. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 139495 (Sub-377TA), filed August 21, 1978. Applicant: NATIONAL CARRIER, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products* and (2) *materials, equipment and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk) (1) from the facilities of Union Camp Corp., at or near Tifton, GA, for 180 days. Supporting shipper: Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 139923 (Sub-49TA), filed August 31, 1978. Applicant: MILLER TRUCKING CO., INC., P.O. Box D, Stroud, OK 74079. Representative: Stephen H. Loeb, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zinc Oxide and zinc dust* (except commodities in bulk), from the facilities of St. Joe Zinc Co. at or near Josephtown (Potter Township, Beaver County), PA to points in TX, restricted to the transportation of shipments originating at the named origins and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: St. Joe Zinc Co., Two Oliver Plaza, Pittsburgh, PA 15222. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office & Courthouse Building, 215

Northwest 3rd, Oklahoma City, OK 73102.

MC 139973 (Sub-50TA), filed August 14, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, 909 Brown Street, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* (except commodities the transportation of which because of size or weight require the use of special equipment), from the facilities of Keystone Consolidated Industries, Inc., at or near Greenville, MS, to points in AZ and NM, for 180 days. Supporting shipper: Keystone Group, Keystone Consolidated Industries, Inc., Peoria, IL 61641. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 140596 (Sub-5TA), filed August 31, 1978. Applicant: NEWPORT AIR FREIGHT, INC., Airport Road, Newport, VT 05855. Representative: S. Arnold Smith, Craftsbury, VT 05826. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic parts for snowmobile machines and other vehicular and industrial equipment*, all on a priority basis with prior or subsequent movement by air, between the ports of entry on the International Boundary Line between the United States and Canada located at or near Derby Line and Beebe Plain, VT, on the one hand, and on the other, Logan International Airport at or near East Boston, MA, under a continuing contract or contracts with Provincial Production & Die, Inc., for 180 days. Supporting shipper: Provincial Production & Die, Inc., 1649 Belvedere South, Sherbrooke, PQ, Canada J1H 4E4. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

MC 140612 (Sub-53TA), filed August 15, 1978. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour, P.O. Box 2207, Cedar Rapids, IA 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in or used by hardware stores*, (except commodities in bulk), from Northridge, CA to points in ND, SD, NE, KS, OK, TX, MN, IA, MO, AR, LA, WI, IL, IN, OH, KY, TN, MS, AL and GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Industries, Inc., 19411 Londelius Street, Northridge, CA 91324. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 140829 (Sub-136TA), filed August 31, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and advertising material and premiums;* (2) *Empty malt beverage containers, packaging material, pallets and scrap malt beverage containers and packing dunnage;* (1) from Golden, CO to points in IA and MO and (2) from points in IA and MO to Golden, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lou Bonner, Director of Transportation, Adolph Coors, Transportation Department, 204 Golden, CO 80401. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 10 North 14th St., Omaha, NE 68102.

MC 142559 (Sub-40TA), filed August 25, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Temporary authority for 180 days sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and marble chips* (1) from Lancaster, PA and Newton, NJ, to OH, IN, IL, MD, MI, NC, SC, VA, and WI; and (2) from Crestline, OH, to IN, IL, KY, MI, NC, PA, SC, TN, VA, and WI, for 180 days. Supporting shipper: Continental Peat Co., 2105 North McCord Road, Toledo, OH. Send protests to: Interstate Commerce Commission, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 143236 (Sub-18TA), filed August 25, 1978. Applicant: WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, South Kearny, NJ 07032. Representative: Jay Schiffres, 1001 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, over irregular routes, transporting: *Photographic paper* between South Plainfield, NJ and points in IL, SC and FL. For 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mitsubishi International Wholesale Corp., 100 Wade Avenue, South Plainfield, NJ. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144696 (Sub-1TA), filed August 25, 1978. Applicant: MEEUWSEN PRODUCE, INC., 9525 Ransom Street, Zeeland, MI 49464. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 141, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs* from Oceana County, Ironia County and Kent County, MI, to points in Salem, Glouster and Cumberland Counties, NJ, Kansas City, KS, and Chicago, IL, and their respective commercial zones, under a continuing contract or contracts with Seabrook Foods, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Seabrook Foods, Inc., 5118 East Clinton Way, Fresno, CA 93727. Send protests to: C. R. Flemming District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 144739 (Sub-1TA), filed August 21, 1978. Applicant: BOB's TRUCK SERVICE, INC., P.O. Box 528, Middletown, OH 45042. Representative: Paul F. Beery, Beery & Spurlock Co., L.P.A., 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Iron and steel, and iron and steel articles*, from the plantsites of Blakes Steel Service, Inc., at Middletown, OH, and Worthington Industries, Inc., at Monroe, OH, to NC, SC, MS, AL, GA, and WV, for 180 days. Supporting shipper: Worthington Industries, Inc., Gene Spears, Traffic Manager, 350 Laughton Ave., Monroe, OH 45050. Blakes Steel Service Pat McGuire, Vice President, Box 466, 1211 Hook Drive, Middletown, OH 45042. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, ICC, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 145290TA, filed August 25, 1978. Applicant: JIM C. FLEMING, JR., P.O. Box 244, Ashland, VA 23005. Representative: Jim C. Fleming, Jr., P.O. Box 244, Ashland, VA 23005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes transporting: *Pallets, wooded, set-up, knocked down, pallet parts*, from Apple Grove, VA to points and places in NC, SC, GA, WV, OH, MI, MD, DE, PA, NY, NJ, CT, MA, NH, and DC, under a continuing contract or contracts with Dominion Pallet, Inc. for 180 days. Applicant has also filed an underlying ETA seeking up to

90 days of operating authority. Supporting shipper: Dominion Pallet, Inc., Route 3, Mineral, VA 23117. Send protests to: District Supervisor Paul D. Collins, Bureau of Operations, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

MC 145292TA, filed August 25, 1978. Applicant: HENRY ANDERSEN, INC., P.O. Box 75, King George, VA 22485. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chimney assemblies, gas vents and doors*, from Fredericksburg, VA and points in its commercial zone to points in AZ, CA, CO, GA, IL, ID, KS, LA, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, WA, MN, WY and FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Products Co., Inc. Charles R. Moore, Fredericksburg, VA 22401. Send protests to: District Supervisor Paul D. Collins, Bureau of Operations, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

MC 145325TA filed August 31, 1978. Applicant: FINESSE EXPRESS, INC., 1303 Humbolt Street, Reno, NV 89509. Representative: Bennie D. Ferrari, P.O. Box Drawer B-F, Incline Village, NV 89450. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture* from the facility of Macy's Reno, NV store and Sparks, NV terminal to points in Placer El Dorado and Nevada Counties, CA, under a continuing contract or contracts with Macy's California, for 180 days. Supporting shipper: Macy's California, P.O. Box 7888, San Francisco, CA 94120. Send protests to: Interstate Commerce Commission, District Supervisor W. J. Huetig, 203 Federal Building, 705 North Plaza Street Carson City, NV 89701.

MC 1934 (Sub-40TA), filed August 25, 1978. Applicant: THE ARROW LINE, INC., 105 Cherry Street, East Hartford, CT 06108. Representative: Dominick T. Biseth, 105 Cherry Street, East Harford, CT 06108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, when moving in the same vehicles with passengers in special round trip operations, during the respective racing seasons of each year at the race tracks specified, beginning and ending at East Hartford and Hartford, CT and extending to the sites of Aqueduct Race Track, New York, NY; Belmont Race Track, Belmont, NY; and Yonkers Raceway, Yonkers, NY, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 36 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: Mr. J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06101.

MC 145293TA filed August 25, 1978. Applicant: CASINO LIMOUSINE SERVICES, INC., 610 Fifth Avenue, New York, NY 10020. Representative: Collister Johnson, Jr., Esq., Peabody, Rivlin, Lambert & Meyers, 1150 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passsengers, in special or charter operations, in roundtrip sightseeing and pleasure tours, not more than six (6) passengers (not including driver and children under 12) in same vehicle at any one time, from New York City, NY to points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE, MD, DC, and VA under a continuing contract or contracts with Specmark, Inc., Merillon Travel Service, Inc., New York Produce Trade Association, Inc., Blum, Haimoff, Gersen, Lipson, Slavin & Szabad, Abbey Travel Service, Inc., for 180 days. Supporting shipper: Specmark, Inc., 3 Turf Louisiana, Roslyn Heights, NY, Merillon Travel Service, Inc., 509 Madison Avenue, New York, NY 10022, New York Produce Trade Association, Inc., 36A-37A NYC Terminal Market, Bronx, NY 10474, Blum, Haimoff, Gersen, Lipson, Slavin & Szabad, 270 Madison Avenue, New York, NY 10016, Abbey Travel Service, Inc., 501 Madison Avenue, New York, NY 10022.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30159 Filed 10-24-78; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 64F)]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Abandonment Near Faribault and Dundas in Rice County, Minn.; Findings

Notice is hereby given pursuant to section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by a Certificate and Decision decided September 29, 1978, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by the Chicago & North Western Transportation Co. of a portion of a line of railroad known as the Faribault-Dundas line, extending from C&NW milepost 45.8 near Faribault to milepost 55.7 near Dundas, a distance of 9.9 miles, located in Rice County, Minn. A certificate of public convenience and necessity permitting abandonment was issued to the Chicago & North Western Transportation Co. Since no investigation was instituted, the requirement of § 1121.38(a) of the regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing exhibit I (§ 1121.45 of the regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than November 9, 1978. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective December 11, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30161 Filed 10-24-78; 8:45 am]

[7035-01-M]

[Docket No. AB-10 (Sub-No. 15F)]

NORFOLK & WESTERN RAILWAY CO.

Abandonment in the City of Norfolk, Va.; Findings

Notice is hereby given pursuant to section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by a Certificate and Decision decided September 29, 1978, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Norfolk & Western Railway Co. (NW) of a portion of its Knitting Mill Branch, Norfolk Division, extending

from railroad station 42+44.5 feet to station 52+89 feet (the end of the Branch), a distance of 1044.5 feet in the city of Norfolk, Va. A certificate of public convenience and necessity permitting abandonment was issued to the Norfolk & Western Railway Co. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than November 9, 1978. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective December 11, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30162 Filed 10-24-78; 8:45 am]

[7035-01-M]

[Finance Docket No. 28873]

NORFOLK & WESTERN RAILWAY CO. AND CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Coordination Project in the City of Albia, Monroe County, Iowa

Norfolk & Western Railway Co. (NW), 8 North Jefferson Street, Roanoke, Va. 24042, represented by R. Curtis Steele, Jr., assistant general attorney, Norfolk & Western Railway Co., Roanoke, Va. 24042, hereby give notice that on the 3d day of October 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under section 5(2) of the Interstate Commerce Act for a decision seeking approval and authorization to purchase from Chicago & North Western Transportation Co. (C&NW) approximately 1,947 feet of trackage and a permanent easement over a strip of land approximately 30 feet extending from NW milepost 271.36 to NW milepost 271.73 in the city of Albia, Monroe County, Iowa.

The proposed transaction will permit Applicant to maintain the continuity of its line of railroad through Albia by acquiring trackage which would otherwise be retired by the owning railroad, rather than by resorting to the much more costly alternative of constructing new trackage to connect the two ends of NW's line at that city.

NW is currently operating three trains per week in each direction over the track pursuant to an 1899 trackage rights agreement between Iowa Central Railway Co. and Wabash Railroad Co., the predecessors in interest of C&NW and NW, respectively. No change in operations after the purchase is anticipated.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 ICC 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28873 and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than December 11, 1978. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30167 Filed 10-24-78; 8:45 am]

[7035-01--M]

[Disaster Relief Order No. 14 (Sub-No. 2)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Decision

Decided: October 20, 1978.

An application has been filed by the Southern Pacific Transportation Co. (SP) seeking authority under section 22 of the Interstate Commerce Act to publish allowances in order to provide reduced rates for persons who would normally ship via the Northwestern Pacific Railroal Co. (NWP) but cannot do so because of the effect of a fire in a tunnel on the NWP at mileage post 195 near Island Mountain, Calif.

It is ordered: The applicant is authorized to publish and file allowances to afford reduced rates under section 22 of the Interstate Commerce Act in the manner prescribed in section 6 upon not less than one day's notice and is authorized to publish in blanket supplements with relief from Rule 9(e) to do so in separate non-counting supplements, all the authority granted herein to expire with December 12, 1978.

The section of the United States and the class of persons entitled to such allowances are shippers of woodpulp from Fairhaven, Calif., on the NWP who, solely because of the fire in the tunnel, assume the cost of transporting woodpulp by highway to Richmond and Oakland, Calif., for loading onto railcars through covered facilities for protection from weather and impuritires and receivers of tank car products at Loleta, Calif., on the NWP which require heating to unload into tank trucks who, solely because of the fire in the tunnel, assume the cost of transporting the products by highway from Oakland, Calif., where heating facilities for unloading are available.

During the period in which any allowances authorized by this order are effective the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under authority of this order.

Any tariffs or tariff provisions published under this authority shall make reference to this order by number and date.

Notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Acting Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register. Copies will also be mailed to

the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y.; the Chairman of the Southern Freight Association, Atlanta, Ga.; the Chairman of the Executive Committee, Western Railroad Traffic Association, Chicago, Ill., and the Vice President, Economics and Finance Department of the Association of American Railroads, Washington, D.C.

By the Commission, A. Daniel O'Neal, Chairman.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30158 Filed 10-24-78; 8:45 am]

[7035-01-M]

[Docket No. AB-20 (Sub-No. 1)]

TEXAS AND PACIFIC RAILWAY CO.

Abandonment Between Barnsdall and Pawhuska in Osage County, Okla.; [1]—Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on September 28, 1977, and the decision of the Commission, Division 1, served April 17, 1978, adopted the decision of the Administrative Law Judge entered on September 28, 1977, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Texas and Pacific Railway Co. of that line of that company extending from milepost 188 near Barnsdall, Okla., in a northwesterly direction to milepost 201, the end of that line at Pawhuska, Okla., a distance of 12.98 miles, in Osage County, Okla.

A certificate of abandonment will not be issued to the Texas and Pacific Railway Co. based on the above-described finding of abandonment until final determination of the proceeding by the United States Court of Appeals. During the interim, however, the procedures specified in section 1a (6) and (7) of the Act will otherwise be followed. Thus, the Commission will be in a position to issue a certificate of abandonment 30 days after publication of this notice (November 24, 1978) unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment), to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

However, as previously indicated no such certificate will be issued until the pending court proceeding has been finally resolved. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30160 Filed 10-24-78; 8:45 am]

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[1] This proceeding is pending review in the United States Court of Appeals for the Tenth Circuit, entitled *Pawhuska, et al. v. Interstate Commerce Commission*, No. 78-1364.

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-170, Amdt. 2; Oct. 18, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion from the October 20, 1978, meeting.

TIME AND DATE: 1:30 p.m., October 20, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 11. Docket 30356, *Transcontinental Low-Fare Route Proceeding*, (Instructions to Staff) for information memo dated September 26, 1978.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The memorandum on the case prepared for the Board by OGC was necessarily developed on the basis of the proceeding record and follows, to some extent, traditional lines for considering the major issues of the need for service, carrier selection and other related materials. The Board does not have before it any presentation or explanation of the effect that the Airline Deregulation Act of 1978, apparently to become effective upon the President's signature, will have on this proceeding. Inasmuch as the new Act, with a new Declaration of Policy and substantially changed "Factors" for interstate transportation, will be in effect before the Board's opinion can be prepared and issued, the Board has voted that it is desirable and essential that it receive the staff's analysis and recommendations on the implementation of the new Act before reaching a final decision. Accordingly, the following Members have voted that agency business requires that item 11 be deleted from the October 20, 1978, meeting agenda and be deferred to a later Board meeting and that no earlier announcement of this change was possible:

Chairman, Alfred E. Kahn
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

[S-2138-78 Filed 10-23-78; 10:08 am]

[6320-01-M]

2

[M-170, Amdt. 3; Oct. 18, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the October 20, 1978, agenda.

TIME AND DATE: 1:30 p.m., October 20, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 5a. Docket 33461, Application of Qantas Airways Ltd. for waiver of Part 212 to carry individually-waybilled cargo on seven passenger charters (Memo 8244, BIA, OGC, BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This item is being added to the October 20, 1978, calendar because Qantas proposes to offer the service immediately. The first flight was scheduled for October 19 and the next is October 23. The staff circulated a memorandum and draft order to the Board on October 18 asking the Board to vote by notation. Because of the precedential and policy issues involved, the following Members voted instead to discuss the issues at the next Board meeting and, accordingly, determined that agency business requires the addition of this item to the October 20, 1978, 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
Member, Marvin S. Cohen

All amendments to previously announced agendas are publicly posted at the Board's offices, sent to the Federal Register for publication, and mailed to parties to docketed cases affected by the change. We regret any inconvenience that may be caused by these changes or the delayed receipt of our notices.

[S-2139-78 Filed 10-23-78; 10:08 am]

[6320-01-M]

3

[M-170, Amdt. 4; Oct. 19, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the October 20, 1978, agenda.

TIME AND DATE: 1:30 p.m., October 20, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 15. Docket 30452, Application for prior approval of the Universal Air Travel Plan (UATP)—1976, Agreements CAB 26433 and 26433-A1, under section 412 of the act. UATP is a joint venture among some 200 air carriers and foreign air carriers establishing a commonly accepted credit card (Memo 8236, 8236-A, BPDA, OGC, BALJ).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Member Cohen has requested that item 15 be deleted from the October 20, 1978, agenda in order to provide him with more time to consider the alternative procedures proposed by the staff. Accordingly, the following Members have voted that agency business requires the deletion of item 15 and that no earlier announcement of this deletion was possible:

Chairman, Alfred E. Kahn
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

All amendments to previously announced agendas are publicly posted at the Board's offices, sent to the Federal Register for publication, and mailed to parties to docketed cases affected by the change. We regret any inconvenience that may be caused by

these changes or the delayed receipt of our notices.

[S-2140-78 Filed 10-23-78; 10:08 am]

[6320-01-M]

4

[M-172, Oct. 19, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., October 26, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Dockets 33093 and 32318, Domestic Cargo Rules and revised Air Freight Forwarder Rules (Instructions to Staff).
3. Docket 33201, Hughes Airwest's petition for an order to show cause why subpart (i) of the Proviso to Condition (4) of its Certificate for Route 76 should not be replaced with a general long-haul restriction on Los Angeles to San Francisco Service (Memo 8243, BPDA).
4. Docket 32621, Trans International Airlines, Inc.—Petition for reconsideration of Order 78-6-96 denying TIA an exemption to sell individually-ticketed seats on several transcontinental positioning flights (Memo 8002-B, BPDA, OGC).
5. Docket 30616, Super-Saver fares proposed by American Airlines, Petition for Reconsideration of Order 78-4-84 (Memo 6870-E, OGC, OEA).
6. Proposed Rule, extends policies adoted for domestic passenger fares to Mainland-Puerto Rico/Virgin Islands fares (Memo 7847-I, BPDA, OGC, OEA).
7. Docket 25474, Petitions for Reconsideration *Hawaii Fares Investigation*, and Proceedings on Remand in *Continental Air Line, Inc., v. CAB* (OGC).
8. Docket 24283, Air Carrier Reorganization Investigation, Order terminating investigation (OGC).
9. Docket 29880, Compensation of Participants in Board Proceedings (OGC).
10. Docket 27631, *Foremost International Tours v. Qantas Airways, Enforcement Proceeding*. Petition for review of an initial decision holding that Qantas' inclusive tour operation was not unlawful (Memo 8131-A, OGC).
11. Dockets 33283 and 33112, Application of Pan American World Airways, Inc.—Acquisition of control of , and merger with, National Airlines, Inc.; Texas International-National Acquisition Case—Motions of Pan American and Texas International to withhold information from public disclosure (OGC).
12. Dockets 29687 and 29758, Applications of Pan American and Trans World to renew their Bahrain exemption authority (BIA).
13. Docket 32724, Application of Trans World Airlines, Inc. for exemption to permit service between San Diego and London/Paris (BIA, BPDA, OGC).
14. Dockets 32833 and 32879, applications of Eastern and American for exemptions to perform nonstop New York-St. Maarten service pending completion of *Caribbean Area Service Investigation* (BIA, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2141-78 Filed 10-23-78; 10:08 am]

[6351-01-M]

5

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 203, October 19, 1978, page 48812.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., October 19, 1978.

CHANGES IN THE MEETING: Delete from the agenda—Proliferation of interest rate futures contract.

[S-2137-78 Filed 10-23-78; 10:08 am]

[6730-01-M]

6

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 49107, October 20, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., October 25, 1978.

CHANGES IN THE MEETING: Addition of the following item:

12. Proposed section 21 order in connection with the Ocean Shipping Act, 1978.

[S-2146-78 Filed 10-23-78; 3:55 pm]

[6730-01-M]

7

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., October 31, 1978.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. North Pacific Trade Study.
2. Agreement No 9981-7: Extension of the Far East Discussion Agreement.
3. Agreement No 10332: Space chartering agreement between NYK Line and Korea Marine Transport, Ltd.
4. Agreement No 9522-36: Modification of the Med-Gulf Conference Agreement to provide for permanent right of independent action.
5. Docket No. 77-33: Agreement No. 10044-3: Modification of Pooling, Sailing, and Equal Access Agreement—U.S. Gulf Ports to Ports in Peru and Docket No. 77-34: Agreement No. 10041-4: Modification of a Pooling, Sailing, and Equal Access Agreement—U.S. Atlantic Ports to Ports in Peru—Petitions for reversal of order of investigation.
6. Docket No. 74-12: Agreement No. 9939-1 (Modification and Extension of a Pooling, Sailing and Equal Access to Government Controlled Cargo Agreement)—Review of Order of Discontinuance.
7. Informal Docket No. 359(I): *Durite Corporation, Ltd. v. Sea-Land Service, Inc.*—Consideration of petition for reconsideration.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-2147-78 Filed 10-23-78; 3:55 pm]

[6770-01-M]

8

[FCSC Meeting Notice No. 26-77]

FOREIGN CLAIMS SETTLEMENT COMMISSION.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings for the transaction of Commission business:

Date, Time, and Subject Matter

Wednesday, November 1, 1978, at 10:30 a.m.; Canceled.
Wednesday, November 8, 1978, at 10:30 a.m.; Canceled.
Wednesday, November 15, 1978, at 10:30 a.m.; Canceled.
Wednesday, November 22, 1978, at 10:30 a.m.; Canceled.
Wednesday, November 29, 1978, at 10:30 a.m.; Canceled.

Dated at Washington, D.C., on October 18, 1978.

F. T. MASTERSON,
Executive Director.

[S-2145-78 Filed 10-23-78; 3:28 pm]

[7020-02—M]

9

[USITC SE-78-54]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, October 31, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary).
5. Bolts, nuts, and large screws of iron or steel (Inv. TA-201-37)—Vote on remedy, if necessary.
6. Skateboards (Inv. 337-TA-37)—Vote.
7. Luggage (Inv. 337-TA-39)—Vote.
9. Any items left over from previous agenda.

Portions closed to the public:

8. Status report on Investigation 332-101 (MTN Study) (if necessary).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-2143-78 Filed 10-23-78; 3:15 pm]

10

NATIONAL RAILROAD PASSENGER CORPORATION.

In accordance with rule 4a. of appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the Board of Directors will meet on November 1, 1978.

A. The meeting will be held on Wednesday, November 1, 1978, in the Columbia A Room of the Hyatt Regency Hotel, 400 New Jersey Avenue NW., Washington, D.C., beginning at 10:15 a.m.

B. The meeting will be open to the public at 11 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

AGENDA—NATIONAL RAILROAD PASSENGER CORPORATION

MEETING OF THE BOARD OF DIRECTORS, NOVEMBER 1, 1978

Closed session (10:15 a.m.)

1. Internal personnel matters.
2. Litigation matters.

Open session (11 a.m.)

3. Approval of minutes of regular meeting of September 27, 1978.
4. Commitment approval requests:
76-8-S1. Station improvements—St. Paul, Minn.
77-242-S2. Chicago, Ill., modernization of 12th and 16th Street Yards—Phase IIIA.
77-264-S1. Conversion of 27 SDP 40 F diesel locomotives.
79-1. Pollution control—Redondo, Calif.
79-2. Purchase of 10 new diesel locomotive.
5. Capital budget fiscal year 1979.
6. Resolution approving Pennsylvania liquor license.
7. Approval of Board meeting dates for 1979.
8. Board Committee reports: Equipment, Northeast Corridor Improvement Project, Organization and Compensation, and Planning and Finance.
9. President's report.
10. New business.
11. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to appendix A of the Corporation's bylaws should be directed to the Corporate Secretary at 202-383-3973.

Dated: October 20, 1978.

ELYSE G. WANDER,
Corporate Secretary.

[S-2142-78 Filed 10-23-78; 10:08 am]

[4410-01-M]

11

UNITED STATES PAROLE COMMISSION: National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: Tuesday, October 31, 1978 at 9:30 a.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Open or closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 15 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-2144-78 Filed 10-23-78; 3:15 pm]

Federal Register

WEDNESDAY, OCTOBER 25, 1978
PART II



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

■

ABANDONED MINE LAND RECLAMATION PROGRAM

Final Rules

[4310-05-M]

Title 30—Mineral Resources

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

ABANDONED MINE LAND RECLAMATION PROGRAM PROVISIONS

Procedures and Requirements

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Final rules.

SUMMARY: The regulations added to this chapter by these Parts established the abandoned mine land reclamation program as required by the Surface Mining Control and Reclamation Act of 1977 (Act). The Act requires that regulations be promulgated for the abandoned mine land reclamation program, which incorporates the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation, submission and approval of State and Indian programs, consisting of a plan and annual submissions of projects.

EFFECTIVE DATE: October 25, 1978, except for public record and report requirements which are subject to General Accounting Office approval and will be effective 45 days following publication (December 11, 1978), unless the General Accounting Office notifies the Office that it does not approve those requirements.

ADDRESSES: Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, 202-343-4006.

FOR FURTHER INFORMATION CONTACT:

Richard Nalbandian, 202-343-4057.

SUPPLEMENTARY INFORMATION: Proposed rules were published in the FEDERAL REGISTER on April 26, 1978 (43 FR 17918) as 30 CFR Parts 840, 841, 843, 845, 848, 850, 852, and 855. In order to consolidate the rules for ease of reference and use, the Office of Surface Mining has been assigned a block of numbers to accommodate all the rules of the Office. The table below is provided to assist the public in comparing the proposed and final rules for Abandoned Mine Land Reclamation.

Final Rules	Proposed Rules
Part 870	Part 837 (Final 12/13/77)
Part 872	Part 840
Part 874	Part 841
Part 877	Part 843
Part 879	Part 845
Part 882	Part 848
Part 884	Part 850
Part 886	Part 852
Part 888	Part 855

The Surface Mining Control and Reclamation Act of 1977 (Act), Pub. L. 95-87, requires the Secretary of the Interior to publish regulations implementing and abandoned mine land reclamation program incorporating the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation of State and Indian programs, consisting of a Reclamation Plan, annual submissions of projects and applications for annual grants. The additional parts to this chapter also include implementation of the Federal, State, and Indian Abandoned Mine Reclamation Funds; general reclamation objectives and requirements; conditions and procedures for entry on land study, exploration, reclamation and emergency reclamation work; requirements for acquisition, management and disposition of eligible land and water; authorization for reclamation on private land; and establishment of interim procedures for Indian reclamation projects.

These regulations are established pursuant to the authority of sections 201(c) and 412(a) of the Act, 91 Stat. 449, 466 (30 U.S.C. 1211, 1242). It should be noted that the regulations implementing the provisions of Title IV relating to the amount and collection of reclamation fees have already been promulgated in 30 CFR Part 837 on December 13, 1977 (42 FR 62713). In conformance with the new numbering system they are redesignated Part 870. A brief discussion of the parts and major sections of the final regulations follows.

Part 872 sets forth general responsibilities for administration of abandoned mine reclamation funds to finance the program. If defines the source and use of moneys deposited in the Funds and the responsibilities of Federal and State agencies and Indian tribes in the conduct of the programs.

Part 874 establishes requirements for the selection of work to be performed with moneys from the applicable Fund. It includes land and water eligibility requirements, reclamation project objectives, and project evaluation factors.

Part 877 sets forth procedures for entry on land by the Office, a State or Indian tribe under an approved Reclamation Plan to conduct studies or exploratory work to determine the existence of adverse effects of past coal mining practices, or to perform necessary reclamation work.

Part 879 contains procedures for the acquisition, management, and disposition of eligible land and water by the Office or a State or Indian tribe under an approved Reclamation Plan. This part also provides requirements for the collection and disposition of charges from the use or sale of acquired lands.

Part 882 authorized reclamation activity on private land after the procedures under Part 877 have been met. Sections 882.12-14 establish procedures for the recovery of the cost of reclamation on privately-owned land.

Part 884 establishes requirements and procedures for the preparation, submission and approval of State Reclamation Plans. Sections 884.15 and 16 contain provisions for amendments to State Plans or withdrawal or Plan approval.

Part 886 sets forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the Plan as approved. This part also contains provisions for the reduction or termination of grants under certain circumstances and requirements for the administration of the grants.

Part 888 establishes intermim procedures for conducting reclamation activities on Indian land in recognition of the unique status of Indian tribes under Title IV as a result of section 710 of the Act. This part is included to provide a method for beginning reclamation of Indian lands which are determined to be emergency or extreme danger situations or are at otherwise high priority for reclamation activities.

CONCURRENCES: The reporting requirements contained in these regulations require General Accounting Office review prior to their implementation.

BACKGROUND: The Surface Mining Control and Reclamation Act of 1977 was signed into law on August 3, 1977. Proposed rules implementing Title IV of the Act were published in the FEDERAL REGISTER on April 26, 1978 (43 FR 17918). Public hearings on the proposed rules were held on May 22, 1978, in Denver, Colo., May 25, 1978, in St. Louis, Mo., and June 1, 1978, in Washington, D.C. At the close of the comment period on June 26, 1978, 28 commenters had responded. The transcripts of the public hearings, and all written comments have been considered in the development of these final regulations.

Comments pertaining to each Part of this chapter have been summarized and are stated below, including explanations of all the significant changes that have been made between the Pro-

posed Rules and these Final Rules. In this way it is hoped that the public will more readily understand the response to each comment and will, therefore, have a better understanding of the bases and purposes of the final regulations.

PART 872—ABANDONED MINE RECLAMATION FUNDS

Part 872 sets forth general responsibilities for administration of State and Indian Reclamation Programs, the Rural Lands Reclamation Program and reclamation activities to be carried out by the Office of Surface Mining Reclamation and Enforcement (Office). It provides definition of terms used in the Abandoned Mine Land Reclamation Programs. It also states the sources of revenue and authorized uses for Federal, State, and Indian Abandoned Mine Reclamation Funds.

1. Three comments were received in regard to coordination between State and Federal Program efforts suggesting rewording to emphasize the need for coordination among programs conducted with moneys from the Fund.

Response: The Office is in full agreement with the importance of close coordination between the programs. The Office has, therefore reworded § 872.4(b) (4) and (5) for clarification of Federal responsibilities and added § 872.4(c)(7) to emphasize the States coordination responsibilities under the Act.

2. Four comments were received concerning the definition of "Emergency" and "Extreme Danger." Most of the concern centered around the use of the word "considerable" in both definitions which was considered to be too arbitrary and left too much to conjecture.

Response: We concur in the commenters concerns and have made the changes necessary for clarification in accordance with the Act.

To reflect the unpredictable nature of an emergency, § 872.5(c) is changed to read "Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, and welfare of people before the danger can be abated under normal program operation procedures".

The word "considerable" in § 872.5(e) was changed to "substantial" as it was in (c) above because: The word "substantial" was used in the Act in the definition of "Imminent danger"; and because Blacks dictionary defines "considerable" as worthy of consideration—and being merely relative—whereas "substantial" is defined as something of real worth and importance—something worthwhile as distinguished from something without value or merely nominal.

3. Three commenters expressed concern over the definition of "expended," proposing that it be modified by adding the words "or obligated."

Response: In our view such a modification would dilute "expend" as used in section 402(g)(2) of the Act to an almost meaningless term. Experience has shown that such latitude promotes hasty last minute obligations rather than well planned programs efforts. The commonly accepted definition of "expend" is to pay out or distribute. Blacks law dictionary definition is "to pay out, use up, consume" and implies receiving something in return; whereas "obligate" is to bind or constrain. No change has been made.

4. Numerous comments were made proposing that funds be made available for the preparation of State Reclamation Plans.

Response: After a careful indepth review of sections 102 (g) and (h), 401(c), and 412(b) of the Act, we have concluded that funds may be made available for some specific elements of the planning phase. We have, therefore, modified the regulations by adding § 872.11(b)(5)(vi) to allow the Office to enter into a cooperative agreement with a State or Indian tribe to gather the data required to assemble a State or Indian plan as specified in § 884.13(f). This may be done only at the request of the Governor or Indian tribe and only with those funds allocated or available for allocation to the State or Indian tribe.

5. One comment was received regarding fees collected from Indian reservations and suggesting that use of such fees exclusively on the reservation seriously impairs the availability of funds to States that are dominated by reservations.

Response: For purposes of Title IV of the Act (sec. 405(k)) Indian tribes have the same status as States, subject to the limitations of section 710 of the Act and Part 888 of this subchapter. Funds collected from reservations are subject to the same procedures—allocations, grants to and withdrawals from the tribes—that are applicable to funds collected from States. However, because Title IV explicitly provides for the allocation of moneys collected on coal producing lands in which an Indian tribe has an interest, the Office must make the necessary allocation.

In this regard, it should be noted that the Office has deleted all references to the term "Indian reservation" in § 872.11 and replaced it with the term "Indian lands." This change was made as a result of a memorandum from the Associate Solicitor, Division of Indian Affairs in the Solicitor's Office which concluded that the legislative history required such a change. The change made is also more consistent with other provisions of the Act and provides the Office with a more identifiable geographical area upon which to base its allocations. No other change was made.

6. Four commenters suggested that work done by the Director on noncoal projects should be done at the request of the Governor of a State, since the work will be done using moneys allocated or available for allocation to States.

Response: That is the requirement in section 409(b) of the Act, the intent of the regulations and is covered under § 874.12(b)(2). For clarification we have made the appropriate change in § 872.11(5)(ii).

7. Twelve comments were directed to the withdrawal of State fund allocations and grants. They range from a suggestion for withdrawal after only 1 year to a suggestion for withdrawal after 3 years of only those funds that have not been obligated.

In addition, suggestions were made to assure expenditure of withdrawn allocations and grants in the States from which they were withdrawn. Suggestions were also made regarding rules for allocation of Federal expenditures.

Response: Section 402(g)(2) of the Act is quite clear in specifying that "if funds—have not been expended within 3 years after their allocation, they shall be available to expenditure in any eligible area as determined by the Secretary." Considerable safeguards are included in the regulations to protect the States from automatic or indiscriminate withdrawals, i.e. § 872.11(b)(2) provides that "allocations *may* be withdrawn" and requires a written finding of fact—similarly § 886.18(b) requires a written notice and an opportunity for consultation and remedial action before termination of a grant. Section 886.18(b) also provides for retention of any portion of a grant required to meet contractual commitments made prior to an effective termination date.

In conformance with the Act, the geographic allocation of Federal expenditures from the fund, including those withdrawn from State allocations and grants, will reflect both the area from which the revenue came and the national program needs. Information regarding such needs is being and will be collected from a wide varieity of sources including reports from private citizens, States and the direct data collection efforts of the Office. It must also be emphasized that Federal expenditures are taken from the Abandoned Mine Reclamation Fund; therefore, all the provisions of Part 874, General Reclamation Requirements, apply equally to the Federal Reclamation Program. Projects carried out with the discretionary funds by the

Office must also be carried out in accordance witht the procedural requirements of Parts 872, 877, 879, and 882 of this subchapter. The regulations, as written, are considered adequate for allocation of "discretionary" funds.

8. One comment was received regarding the deletion of the word "demonstration" in § 872.11(b)(5)(iii) and suggesting such deletion could change congressional intent.

Response: The word was inadvertently omitted in the proposed regulations. It has been added in the final regulations. (iii) now reads "* * * research, development, and demonstration projects," reflecting the common terminology in the scientific community.

9. Three suggestions were made suggesting that a provision be added to require withdrawal of funds transferred to the Secretary of Agriculture if not expended within 3 years.

Response. Under Federal budgeting procedures, funds will be transferred to Agriculture only in the amounts programed for use during a specific budget cycle. Provisions for withdrawal of funds are not required in these regulations since normal Federal accounting and budgeting procedures will achieve essentially the same results the commenters desired.

10. One commenter suggested making all of a State's allocation available on the date that a State's plan is approved.

Response: Allocations are technically available in their entirety upon approval of a State plan. They are available for appropriation by the Congress pursuant to section 401(d) of the Act and annual project requests may be made pursuant to section 405(f) of the Act. Grant applications may be submitted pursuant to § 886.15 of the regulations. We have requested appropriation of allocated funds for fiscal year 1979 based on our best estimate of the State plans and grant applications that will be submitted and approved during that period. If the number exceeds our expectations we are prepared to request supplemental appropriations to meet the need. This emphasizes the importance of the annual budget effort.

11. One commenter expressed concern that the application of OMB Circular A-102 in § 872.12 to management of the State Funds would discourage States from placing their own money in the accounts.

Response: We agree that it might serve as a deterrent for depositing other State money in the fund. We have provided the State the option of depositing other money in the account for their administrative convenience if they so desire. We have no alternative for management of the Fund which is established pursuant to section 401(a) of the Act, and which requires management in accordance with approved Federal practice under OMB Circular A-102. No changes are necessary.

PART 874—GENERAL RECLAMATION REQUIREMENTS

Part 874 sets forth requirements relating to eligibility, priorities, selection, and evaluation that are applicable to State, Indian and Rural Lands Reclamation Programs and reclamation activities to be carried out directly by the Office. Consideration was given to including in this part standards for reclamation project operations comparable to the environmental performance standards for current coal mining operations. Such standards are not included at this time because a more extensive review is required to define specific national standards which are appropriate for the disparate reclamation activities to be conducted. Comments on the nature and content of standards which should be developed were requested and there were eleven such responses which are addressed in comment 17 below.

1. One commenter asked why the Rural Lands Reclamation Programs was mentioned in § 874.2, since proposed regulations for the program known as RAMP were published in the FEDERAL REGISTER in volume 43 at page 15312.

Response: No change to § 874.2 is needed. As stated in § 874.1, Scope, "This part establishes general requirements for the selection of work to be performed with moneys from the Abandoned Mine Reclamation Fund, * * *." The Rural Lands Reclamation Program (Rural Abandoned Mine Program or RAMP, as it has been named by the Soil Conservation Service) receives moneys from the Fund and is, therefore, subject to certain common conditions for the use of moneys from the Fund. The inclusion of such common conditions are intended to insure coordination and uniform management of programs carried out with the Fund, and have been carefully coordinated with the Soil Conservation Service.

2. Although no comment was received addressing this change, § 874.5 *Definitions* was added as a result of changes made in this Part that made it necessary to define the phrase "left or abandoned in either an unreclaimed or inadequately reclaimed condition." The definition reflects the language found in the Congressional Record at H.R. Rept. No. 2, 95th Cong., 1st sess. 140(1977).

3. Nine commenters suggested that the language of § 874.12 did not follow closely enough the wording of section 404 of the Act. In § 874.12(a) they objected specifically to the deletion of the word "coal" from the eligibility requirements as stated in section 404 of the Act, apparently feeling that this indicated a de-emphasis of the priority assigned to coal mined lands by the Act. Several also felt that the connecting words used between § 874.12(a) (1), (2), and (3) should also reflect the proper combinations of the requirements of the Act.

Response: The suggestions for insertion of the word "coal" in § 874.12(a) were not accepted. § 874.12(b) establishes eligibility requirements for reclamation of lands and water affected by past non-coal mining activities and incorporates the provisions of section 409 of the act. § 874.12(b), when read with § 874.12(a), establishes eligibility priorities consistent with both sections 404 and 409(c) of the act. Section 874.12(a) was, however, rewritten to reflect the proper combinations of the requirements of the act and to clarify the meaning of "continuing responsibility." Responsibility will be determined only by State Statutory law and will not include common law. In addition, the language was broadened to allow lands to remain eligible in the event a forfeited bond is insufficient to do an adequate job of reclamation. These changes reflect the best judgment of the Office regarding the intent of Congress gleaned from the act and the legislative history. The legislation did not specifically address the issues of common law responsibility or bond forfeiture and, as a result, the Office has made a judgment that will most likely result in accomplishing more reclamation activity than if lands subject to common law liability or under bond forfeitures had been excluded.

4. Three commenters suggested alternative or additional language for § 874.12(c), seeking to eliminate what they perceived as ambiguity or to set more flexible criteria for determining eligibility of proposed reclamation projects by deleting the phrase "beneficial use of land or water resources" and substituting the phrase "approved post-mining land use."

Response: The suggestions were not accepted. The language in § 874.12(c) was taken directly from section 102(h) of the act and provided sufficient latitude for selection of projects. However, the section has been moved in the final regulations and is now included in § 874.5(b).

5. Eight commenters recommended that the word "coal" be inserted in §§ 874.13 (a), (b), and (c) between the word "past" and the words "mining practices." They said that this is necessary to insure the observance of the priority to be given coal reclamation under the act. Two of these commenters further suggested that the work "coal" should be deleted from § 874.13(d), again in order to follow

more closely the wording of the act and the intent of Congress.

Response: Our efforts to combine coal and non-coal priorities were apparently difficult to understand. We have, therefore, accepted the recommendations to insert the word "coal", and have expanded the section to include the priorities established in section 409 (a) and (c), and 402(g)(2) of the act, respectively for non-coal mined lands. The suggestion to delete the word "coal" from § 874.13(d) was rejected because section 409(c) of the act sets forth a necessary action-oriented program which precludes "non-coal" from § 874.13 (d), (e) and (f) of the regulations. The changes are not substantive, but rather add language to clarify the intent of the rules.

6. One commenter recommended that development of land adversely affected by coal mining for housing of people who are disabled or dislocated as a result of coal mining be established as the sixth priority in § 874.13.

Response: The recommendation was not accepted. The section follows the priorities specified in the act. § 874.14(a)(3)(vi)(d) allows such benefits to be considered in evaluating proposed reclamation projects. Acquisition of land for housing is, in our view, dealt with by section 407(h) of the act as an authority rather than as a priority. We have treated it the same way in the regulations.

7. Two commenters asked for clarification of the exclusion of channelization under objective number three in section 403 of the act and objective (c) in § 874.13 of the regulations.

Response: No change to the regulation is needed. Section 403 of the act is construced to permit channelization necessary to meet objectives 1, 2, 4, 5, and 6 in section 403 of the act (objectives a, b, d, e, f, and g in § 874.13 of these regulations). That is, channelization is permitted in all cases except under section 403(3) and § 874.13(c), where it is specifically excluded by the act.

8. One comment noted that the notification and review requirements of OMB Circular A-95 are not addressed by the regulations.

Response: Section 886.15(a) has been rewritten to insure fulfilment of OMB Circular A-95 notification and review requirements. Such notification and review is required by Part 1 of the Circular itself. Furthermore, State and regional review insuring coordination of planning and implementation of projects involving public monies is simply a fundamental sound planning practice.

9. One commenter noted that § 874.14 does not recognize the unique requirements of section 406 of the act and the need for assurances on the consistency of the Rural Abandoned Mine Program with these regulations.

Response: As stated in section 874.2, the objectives of this Part are to establish conditions common to all programs. Likewise, § 874.11 specifies that the provisions of this Part apply to all projects. RAMP is included by reference because its funding comes from the Fund. Additional reference in § 874.14 is not necessary.

10. One commenter suggested adding an evaluation factor to § 874.14(a)(3) that specifically would consider erosion control and sediment reduction.

Response: The words "abatement of erosion and sedimentation," have been added to § 874.14(a)(3)(ii). This is justified since exacerbation of erosion and sedimentation is one of the major and most common environmental problems associated with abandoned mine lands. (See "Environmental Impact Statement, Rural Abandoned Mine Program," Soil Conservation Service, July 3, 1978, pp. 16, 18, 32, 36.)

11. One commenter suggested that § 874.14(a)(8) should emphasize that maintenance of the reclaimed area and post-reclamation management are essential factors upon which an evaluation should be based.

Response: The word "maintenance" has been added. It is obvious that maintenance will often be necessary to successful reclamation, e.g., irrigation may be required until self-supporting vegetation is established, or periodic dredging of a sedimentation pond or impoundment may be needed to insure adequate storage capacity.

12. One commenter suggested the addition of two new evaluation factors in subpart 874.14; one related to hazards that may be created by sealing abandoned underground openings adjacent to active mines and a second related to the need for local, State, Indian and Federal coordination where mines lie near or across jurisdictional boundaries.

Response: The first evaluation factor suggested was provided for by adding the words "or after" in § 874.14(a)(4). This gives sufficient latitude to consider such potential hazards. The second comment was not accepted, since such intergovernmental coordination is already considered in Part 872 of this subchapter.

13. One commenter felt that in § 874.14(a)(5) "costs of reclamation" and "economy and efficiency" were given too little consideration and suggested that more emphasis should be given to these criteria.

Response: The comment was not accepted. The commenter apparently believed that the evaluation factors are listed in order of weight or value assigned. This is not so. No values or priorities have yet been assigned to the factors. But in any case, it must be emphasized that Pub. L. 95-87 is an environmental act. Hazards to people and the environment are the overriding concerns rather than cost-benefit considerations.

14. One commenter asked the meaning of "future" in § 874.14(a)(6)(i) and of "special consideration" in § 874.14 (a)(6)(ii). Further, he asked what actions a State may take if no one has indicated an interest in resource recovery despite the presence of a major resource in a refuse site.

Response: The Office or State has flexibility in determining "future" as any time subsequent to the present. "Special consideration" means that the Office or State should carefully examine the site proposed for reclamation to determine if it is likely to be reminded in the near future, thereby negating the proposed reclamation work. The Office and the State have an obligation to insure for as long as possible the benefits derived from reclamation. Finally, the Office or State may recover the coal itself in the course of reclamation, or may otherwise reclaim the site if it so desires and if the project fulfills the other selection criteria.

15. One commenter suggested addition of the words "if *economical* to recover the resource" to § 874.14(a)(6)(ii).

Response: The comment was not accepted. The regulation simply requires consideration of the resource as one of the evaluation factors, not recovery of it. Sufficient latitude is given by the regulation to allow the recoverable coal resource either to be recovered as a part of the reclamation effort or foregone if necessary.

Finally, as a result of consultation with the U.S. Fish and Wildlife Service, § 874.14(a)(3)(ii) was changed to read "—quality, fish (and), wildlife, *and plant* habitat * * *" in order to be in accord with the requirements of the Endangered Species Act of 1973.

16. Eleven comments were received concerning the application of specific standards to reclamation work on abandoned mine lands. The comments ranged from proposing specific standards or areas for consideration to challenging the authority of the Office to promulgate such standards under Title IV.

Response: Each of the comments will be carefully considered in the development of reclamation standards for abandoned mine lands. Additional public comment and discussion will be invited and considered during the subsequent rulemaking. Proposed rules will be published, a formal comment period will be provded, and final regulations will be promulgated. A tenative schedule for this rulemaking will be published in the near future. However, until such rules are promulgated, the specific requirements for reclamation

work will be considered on a case-by-case basis. The Office believes this will be an acceptable practice because the reclamation work done during this period will generally address only emergency or extreme danger situations.

However, the comment challenging the authority of the Office to establish standards does deserve a response at this time. Sections 201(c) and 412(a) of the act provide ample authority to promulgate necessary regulations for the implementation of the act. Furthermore, section 405 places an obligation on the Office to monitor the progress and quality of State reclamation programs. It is self-evident that in authorizing, funding, evaluating, or directly undertaking work under Title IV, the Office must establish certain minimum standards for the quality and acceptability of the work and upon which it may make a judgment about the progress and quality of work performed. Obviously, the Office must be able to judge whether the objectives in section 403 of the act are indeed being fulfilled.

PART 877—RIGHTS OF ENTRY

Part 877 establishes procedures for entry on private lands for purposes of study or exploratory work, and reclamation. The rules state a policy preference for entry under a written consent from the owner rather than under the police powers provided in sections 407 (a) and (b) and 410(b) of the act. When advance consent cannot be obtained, entry for study or exploration and reclamation is limited to those cases, or discovering those cases, where there is reason to believe that the adverse effects of past coal mining may be harmful to the public health, safety or general welfare. Notice requirements and procedures for certain wirtten findings are proposed for those cases when consent cannot be obtained.

1. There were 22 comments concerning the right of entry. Most of these comments related to § 877.11 concerning the legal description of the land. Most commenters were under the impression that a legal description would entail getting a metes and bounds description by a survey of the property. Others wanted to have only oral consent or just a handshake agreement to enter upon the property.

Response: We did not accept the suggestions for adoption of an oral consent or deletion of the legal description. It is extremely important to establish ownership and the specific nature of any agreement, in order to determine such things as land eligibility and liening requirements. The requirement for a legal description can be satisfied by using the description found in the county land records, tax maps or abstract of title, without employing the metes and bound method.

2. One commenter expressed the need for protection of the landowner from reclamation efforts that result in more hazardous conditions, and Federal responsibility for after-effects of emergency reclamation.

Response: Under the Anti-Deficiency Act, 31 U.S.C. 665, *et seq*, the Federal Government is prohibited from entering into agreements to indemnify or hold harmless any landowner receiving assistance. The Office is, therefore, prohibited from making rules to provide for such indemnification. The Office intends, however, that all work will be performed according to the highest professional standards and approved work plans.

3. Under § 877.14 a number of commenter suggested that we add the word "state" after the word "Office".

Response: This section addresses provisions for emergency situations. Section 410 of the act only authorizes the Secretary to do emergency reclamation work. Moreover, section 405(d) specifically excludes States from engaging in emergency reclamation work under section 410. Therefore, the Office cannot accept this comment.

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Part 879 reflects several provisions of Title IV of the Act for acquisition, use and disposal of land and water. For the convenience of the public, the following table reflects the primary authority in the Act for selected provisions of this part.

Section of proposed rules	Section of the Act
879.11(a)	407(c) (1) and (2) and 407(f)
879.11(b)	407(c) (3) and 407(f)
879.11(c)	407(h)
879.11(d)180409(e)	
879.12(c)	407(c)
879.12 (d), (e), and (f)	407(d)
879.13	407(c) and 409(e)
879.14	407(f)
879.15	407(g)(2)
879.15 (b) and (c)	412(b)(2)
879.15 (d) and (e)	407 (e)
879.15(f)	407(h)
879.15(g)	407(g)(1)

Sections of the regulations not specifically identified in the above table, as well as some portions of the sections identified, are promulgated under section 412(a) of the Act, which allows the Secretary to promulgate rules that are necessary or expedient to implement or administer the provisions of Title IV.

OSM received 32 comments from 12 agencies and organizations in public hearings and letters. Six comments were editorial and eight recommended changes to clarify and enhance comprehension of the regulations. Several commenters applauded the expressed policy of the Office to restrict acquisition and condemnation of real property as much as possible and thereby use the Fund for reclaiming lands rather than acquiring lands. They further suggested that the acquisition of lesser interest in land (e.g., leases, easements) whenever possible to accomplish the reclamation work would avoid acquisition and a large inventory of real property that may not be productively utilized.

1. Three commenters recommended that we add "or lands necessary to abate pollution from past coal mining practices" after "Land adversely affected by past coal mining practices." in section 879.11(a).

Response: Section 404 of the Act clearly specifies that eligible lands are those lands which were mined for coal or directly affected by mining processes. Section 407(c) of the Act restricts purchase to adversely affected lands. Therefore, to the extent this addition is directed at purchasing nonaffected lands, the Office would be exceeding the scope of the Act to include it. This does not, however, prevent the placement of a treatment plant on other than abandoned mine land. It simply prevents the purchase of such land with money from the Fund.

2. The question was raised as to whether a State needs to have specific legislative authority to acquire land, condemn land or enter upon land by exercise of the police power. As an example, one State reclamation agency has authority to acquire property but does not have authority to (1) condemn property for reclamation, (2) levy liens for reclamation, or (3) exercise the police power to effect entry onto private lands. They raise the question as to whether the reclamation agency will need to ask the State legislature to provide the same authorities as provided in Pub. L. 95-87 in order for the State to have its reclamation plan approved.

Response. Section 405(d) of the Act requires that a State enact or already have in effect existing legislation to implement Pub. L. 95-87 in order to qualify for program approval. This is interpreted as requiring the State legislature to give or make available to the State reclamation agency comparable authority to that provided in Title IV of the Act, including the authority to condemn, enter and place liens. Guidelines for State statutes are being prepared at the present time and will be provided to the States upon completion.

3. One commenter recommended deletion of § 879.11(e) because it is overly restrictive and serves no overriding public interest. He cautioned that fragmented ownership should be avoided.

Response: The comment was not accepted. Section 407(c) of the Act provides for acquisition of only those interests in land or water necessary for reclamation or post-reclamation uses. Consequently, land acquisition will be the exception rather than the rule and limited by the scope of the project.

4. One commenter recommended the deletion of § 879.12, Procedures for Acquisition, to provide flexibility and recognition of differing standards for different States by inserting instead "The Office, State or Indian tribe which acquires land under this Part shall comply with the applicable relocation law, regulations and procedures specified by the Office, State or Indian tribe."

Response: The comment was rejected. Section 407(e) of the Act and other Federal regulations (OMB Circular A-102, 41 CFR 114-50-103) provide for accomplishing this as set out in the regulations of this section. The Office is legally bound to follow the regulations of the Department of Interior, the Department of Justice and the Office of Management and Budget.

5. Two commenters suggested that a State be allowed to waive user charges on acquired land.

Response: The comment was accepted. The language in § 879.14(b) was changed to include States and Indian tribes. User fees may be waived when determined to be in the public interest. When the use primarily benefits the health, safety, or environmental values of the greater community or area in which the land is located and such use will protect the land and improvements and will not result in a significant monetary gain or profit to the user, it may be considered to be in the public interest. A determination must be made as to whether the land use is in itself beneficial to the public, whether the cost of collecting fees would be excessive in terms of returns and whether user fees are required to offset maintenance costs. These are determinations that must be made locally; therefore, the States and Indian tribes are in the best position to make them on lands under their jurisdiction.

6. Several commenters objected to the fact that land use agreements and reverter provisions are provided for when reclaimed land is transferred to a State agency or political subdivision, but such restrictions are not provided for in the case of sales for industrial, commercial, residential or recreational development.

Response: Section 407(e) of the Act requires land use agreements and reverter provisions in transfers to State or local governments. General safeguards, applicable to all land disposals, are included in § 879.15 of the regulations to assure that disposition of land is not contrary to the purposes for or authority under which the acquisition was made.

7. One commenter objected to the fact that the State's preference right to purchase reclaimed land requires the State to pay fair market value or not less than the cost to the United States of the purchase and reclamation of the land.

Response: Section 407(e) of the Act sets forth this requirement. It should be noted that, alternatively, the State can also bid at public sale.

PART 882—RECLAMATION ON PRIVATE LAND

Part 882 states the authority of the Office, States and Indian tribes to perform reclamation on private lands. It establishes a requirement for appraisals of the land value before and after reclamation work consistent with uniform appraisal standards. The rules also establish conditions and procedures for the filing of liens on private property equal to the increase in fair market value that results from reclamation work under certain circumstances.

Thirty-seven comments were received from 17 commenters.

1. One commenter suggested that loans be made to private landowners for reclamation work and another commenter suggested that the landowner be sent a bill for reclamation costs.

Response: The comments were not accepted. The Act does not provide authority for those activities. Section 408 of the Act does, however, provide for the filing of liens in specific instances. Rules for filing liens are found in § 882.13 of the regulations.

2. One commenter recommended that the wording of the regulations be changed to specify that the lien shall not exceed the increase in the market value of the land and asked that we delete the requiremnt for a statement of moneys expended.

Response: We agree that the lien cannot exceed the difference between the pre-reclamation and post-reclamation appraised market values. The rule as proposed stated this concept in old § 848.12(a) now § 882.12(a). Section 408(a) of the Act requires that a statement of moneys expended for the reclamation work be filed along with the appraisals. No change was required.

3. One commenter was concerned that the provision for filing a lien within 6 months was not a sufficient time to evaluate the increase in market value of the reclaimed land.

Response: This provision for filing the lien within 6 months of completion of reclamation work is required by section 408(a) of the Act.

4. One commenter suggested that the regulations provide for an appraisal to be made by an independent appraiser and notarized rather than provide for following procedures of the Uniform Appraisal Standards handbook.

Response: The suggestion was accepted for appraisals made for the purpose of filing liens. This conforms more closely to the language of the Act. The requirement for following the Uniform Appraisal Standards handbook was, however, retained to meet the requirements placed on us by the Department of Interior regulations and requirements of the Department of Justice.

5. Eleven commenters objected to the word *shall* in describing when a lien is to be filed in § 882.13 of the regulations. The Act indicates *may* and all commenters favored *may*.

Response: The legislative history is clear that Congress intended that no windfall profits should inure to the benefit of private landowners as a result of reclamation work on their land. Both House Report No. 95-218 at page 139 and the Conference Report on the final bill at page 100 indicate that a lien should be used by either the State or the Secretary to recover the costs, up to the increase in fair market value, of reclaiming abandoned property. Therefore, the use of mandatory language in § 882.13(a) requiring the State, Office, or Indian tribe to place a lien on private property is justified.

However, there were three problems with proposed § 882.13(a)(3), which allowed the Director to waive a lien if he determined a lien would not be consistent with the purposes of the reclamation and the landowner dedicated the property for a valid public use for an appropriate period of time. First, that provision took the decision of waiver away from States or Indian tribes. If a waiver is justified, that decision should reside equally with States or Indian tribes because the Act itself states that "* * * the Secretary or the State, pursuant to an approved State program, shall itemize the monies so expended and may file a statement * * *. Such statement shall constitute a lien upon the said land." Section 408(a). Indian tribes are included because section 405(k) of the Act defines Indian tribes as "States" for purposes of Title IV.

Second, while the concept of a waiver provision is authorized by use of the discretionary word "may" in section 408(a), House Report No. 95-218 at page 139 is clear that Congress did not intend the use of any device which would, in effect, amortize the cost of the reclamation work over a period of time at the end of which the landowner would be released from all repayment obligations. The language in proposed § 882.13(a)(3) contravened the expressed intent not to amortize by suggesting the use of a dedication for a limited period of time.

Third, the waiver provision as written did not address those situations where it may be unfair to burden a private landowner with a lien. For instance, if subsidence occurs on land recently purchased and the purchaser had no knowledge of the underground mine workings which were the cause of the subsidence, placing a lien on that property may result in the landowner paying twice. In fact, the value of his land may not increase over the amount he paid for the land only a short time before the property subsided. However, compared to the value of the land in a subisided condition, the reclaimed portion may be worth substantially more. In such a case, it is doubtful that a genuine windfall would result. Another example may be the case where reclamation work on an individual's land would actually produce far more benefit to the community at large, such as reclamation to correct acid drainage, siltation into streams, or aesthetic impacts. Such work may be deemed to be in the interests of the public health, safety or general welfare rather than viewed only in terms of the benefit to the individual landowner.

The facts and circumstances surrounding each such case, and others that may arise, must be examined to determine whether a lien is appropriate or necessary to protect the public from windfall profits inuring to the benefit of private landowners. The Office has, therefore, redrafted § 882.13(a)(3) to extend waiver authority to States and Indian tribes when the work performed is primarily for off-site benefits or is the result of unforeseen problems and will not result in a significant increase in value.

6. Thirteen commenters objected to the provision in subpart 882.14 for satisfaction of the lien within 5 years on the grounds that it will discourage program participation, create hardships on landowners and generally result in ill-will.

Response: These comments were generally accepted. There is nothing in the Act or the legislative history that requires satisfaction of a lien within a specified period of time. The Conference Report at page 100 does indicate that the Secretary or State is empowered to act to recover the costs of reclaiming privately owned lands. However, under an earlier House bill (H.R. 9725) it is clear that Congress contemplated satisfaction of liens at the time of sale. To more accurately reflect Congressional intent the Office has redrafted this section.

This rule is now written to exclude gratuitious and testate or intestate transfers, but it covers all other transfers where there is consideration involved. In other words, liens shall be fully or partially satisfied at the time of sale or exchange for other personal or real property. If partially satisfied, unsatisfied amounts will remain as a lien against the property. New paragraph (b) recognizes that there may be jurisdictions in which liens must be periodically renewed or otherwise maintained to remain effective and subject to satisfaction at the time specified under paragraph (a).

PART 884—STATE RECLAMATION PLANS

Part 884 establishes the procedures and requirements for the State plan required by section 405(b) of the Act. Such plans are required before the Office is authorized to make grants to the States for reclamation work. A State is not eligible to have a plan approved until it has an approved State regulatory program pursuant to section 503 of the Act and subchapter C of this chapter.

1. One commenter asked to have the regulations specify an exact length of time that the State plan covers.

Response: It is recognized that moneys will come into the Fund over a 15-year period. However, a State may elect in its Plan to include any or all of the various uses of the Fund and to address these uses in varying degrees, provided that first priority be given to correcting abandoned coal mine problems. If the magnitude of the problem is known and a reasonable method of solving it is presented, then the time frame of the plan need not be predetermined. We will, however, expect the States to present plans covering a reasonable future period, probably a minimum of 3 to 5 years, allowing appropriate adjustments State by State.

2. One commenter requested that the regulations be revised to reflect the desire that a State planning agency would be the most appropriate agency to be in charge of the State program.

Response: The Act is quite specific in saying that once the State has an approved plan, it has exclusive responsibility and authority to implement the provisions of the approved program. The Governor of the State may choose and so designate any competent agency of the State to carry out the program.

3. Two commenters requested that a State be given the opportunity to take corrective action to prevent withdrawal of Plan approval.

Response: The comments were accepted because it is desirable to provide a fast and informal means to prevent a State program from being interrupted or withdrawn. Section 884.16(b) has been changed to provide the opportunity for corrective action by allowing for consultation, a hearing if requested and performance of remedial action prior to the notice of withdrawal.

4. The question was asked whether the regulations allow a private citizen to submit a project directly to the Office of Surface Mining for funding if the project was previously submitted to and rejected by his State.

Response: Although the Act and the regulations strongly encourage citizens to work with an active State program, a private citizen can submit a proposed project to the Office for consideration provided it meets the reclamation requirements set forth in Part 874 of the regulations.

5. Numerous comments were received criticizing the amount of detail required in the State plan, especially the reclamation activities in § 884.13(f).

Response: The regulations, as proposed, require a general description of these reclamation activities. It was intended that the word "general" would convey the meaning that existing and readily available information would be gathered, analyzed, and summarized. The States must, however, present enough data to demonstrate to the Office and to the public that the plan represents a feasible and orderly approach to the required reclamation. It is recognized that additional information may have to be obtained in future years to either update the State plan or to fill in minor gaps. In view of the requirements in the Act to consider on-site and off-site local and regional impacts of past mining, it is felt that the information required is not excessive.

6. One commenter questioned the difference between the public involvement in § 884.13(c)(7) and § 884.13(e).

Response: Subsection 884.13(c)(7) requires the State to give a detailed description of the policies and procedures to be followed in the State Reclamation Program, i.e. operation of the program (which includes the original Plan, amendments and annual grants). Section 884.13(e) requires the State to give a detailed description of the extent of public involvement in the preparation of the proposed State Reclamation Plan. No changes were required.

PART 886—STATE RECLAMATION GRANTS

Part 886 includes procedures and requirements for annual grants to States to conduct reclamation activities under their approved Reclamation Plans. Grant applications will be approved by the Regional Directors of the office. The procedures for processing grant applications follow closely thje procedures for other grant programs administered by the Office with one major exception: Grant applications will be submitted according to the requirements of OMB Circular A-102 in the format for Federal Assistance Applications for Construction

Programs. Limited variations to this format are provided.

1. Several commenters suggested that § 886.12(b) and § 886.15(b)(1) be expanded to clarify the administrative costs incurred in support of the State abandoned mine land program which can be included in the annual grant.

Response: These comments have been accepted. Since § 886.21(a) sets forth those costs which are allowable under section 401(2)(9) of the Act, it has been revised and referenced in §§ 886.12(b) and 886.15(b)(1).

2. Two comments were received requesting that the grant period set forth in section 886.13 be extended so that funding may be approved for the life of the proposed project.

Response: These comments were partially accepted. The grant will provide funding for both support of the State program and for individual projects as required in section 405(f) of Pub. L. 95-87 of the Act. Supportive costs, including administrative, are to be funded on an annual basis. However, individual projects applied for in any year may be funded for a maximum of 3 years. The regulations have been rewritten to provide this flexibility. The alternative for States to fund projects through sequential grants has been retained.

3. For §§ 886.15(c) and 886.17(c) one commenter suggested that if notification is not received within 30 days regarding whether or not the grant application is approved, the application should be deemed approved.

Response: The comment was rejected. The language of section 405(h) of the Act indicates grants should not be self-executing, but rather they require action by the Office on an annual basis. Section 405(i) of the Act requires monitoring of the program. Therefore, positive action is required to approve a grant. The language has been changed, however, to provide notification within 30 days regarding the status of the application.

Because of the concern over the funding for the life of the project, language has been added to § 886.15(b)(1) allowing funding for individual parts of multiphased projects. The information submitted with the individual project for which funding is being requested must include information on the overall magnitude, scope, and total cost of the entire project.

4. One commenter suggested that the requirements for notification of grant changes in section 886.17(b) should be deleted.

Response: This comment has been rejected since section 405(h) of the Act requires prior approval of both the plan and proposed projects. Changes in projects which require notice are set forth in OMB Circular A-102. Where the proposed changes exceed the limitations set forth therein, approval must be made to insure that the amendment proposals conform to the requirements of the approved plan.

5. For § 886.18(a)(3) one commenter suggested changing the authorization provided to the Regional Director for terminating, suspending or reducing grants so that he has discretionary authority on the action.

Response: This comment has been rejected since section 405(d) of the Act requires such action in cases of failure to implement, enforce or maintain an approved State regulatory program. However, the regulations do provide the retention of those funds that are necessary to meet contractual commitments made prior to the effective date of the termination to the extent such commitments cannot be reduced.

6. One commenter suggested that the 10-day minimum time limit for response upon notification of intent to reduce, suspend or terminate a grant in § 886.18(b)(1) be extended to 30 days.

Response: This comment was rejected. The language of this section conforms to the provisions of OMB Circular A-102. The time frame is considered sufficient for the agency to request the opportunity for consultation and remedial action prior to termination, suspension or reduction of the grant. It was noted that paragraphs (4) and (5) of § 886.18(b) were inconsistent; therefore, paragraph (5) was deleted and subsequent paragraphs renumbered accordingly.

7. Several commenters suggested that subpart 886.21 be reworded to clarify in what instances the 90 percent matching funds are applicable.

Response: These comments were accepted and § 886.21 was reworded so that it is clear that 90 percent matching funds apply only to the acquisition of land as set forth in section 407(e) of the Act.

8. For § 886.21 several commenters suggested that language be added to cover other administrative costs necessarily incurred in the program.

Response: Administrative costs are authorized by section 401(c)(9) of the Act. Section 886.21 has been reworded to allow for such costs. As a matter of policy, the Office will assign a lower priority to costs incurred from the operation and maintenance of treatment plants because of the increasing costs associated with permanent facilities.

9. One commenter suggested that the time required for the retention of records in § 886.24 be specified.

Response: This comment has not been accepted. The regulations reference OMB Circular A-102, Attachment C, which contains the specific retention requirements, setting the minimum at 3 years.

10. One commenter suggested that wording be added to § 886.24 to make records available for public inspection.

Response: This comment was not accepted since the regulations reference OMB Circular A-102, Attachment C, which specifies the requirements for availability of records to the public.

11. One comment suggested that the regulations should include grants to other Federal agencies, in addition to the Bureau of Indian Affairs, for reclamation of lands under their jurisdiction.

Response: The regulations are intended to include all eligible lands in the United States. The regulations specifically cover lands under the jurisdiction of States and Indian tribes because those lands are "private" lands as opposed to lands owned by the U.S. Funds may be transferred to other Federal agencies for reclamation of eligible lands if provided for in a cooperative agreement under section 412(b) of the Act.

PART 888—INDIAN RECLAMATION

Part 888 establishes special interim procedures for identifying and conducting needed reclamation work on Indian lands. Such procedures are necessary because the Act does not provide for Indian regulatory programs until a study of how Indian lands are to be regulated is completed (section 710 of the Act) and legislation providing for Indian regulation of these lands is enacted. Section 405(c) of the Act prohibits approval of funding of a State abandoned mine reclamation program unless the State has an approved State regulatory program. Section 405(k) of the Act requires that Indian tribes be considered as States for purposes of Title IV.

1. One comment was received expressing concern over the proposed regulations because they did not authorize Indian tribes to formally adopt reclamation plans. The commenter expressed the hope that the Office would complete the study under section 710 of the Act so that tribes would not be penalized for a long period of time.

Response: The Office lacks authority to approve or fund an Indian Reclamation Plan at this time because Indian tribes are not authorized to develop and get approval of a regulatory program; therefore, such authorization cannot be provided in these regulations.

The regulations authorize the Regional Directors of the Office to work with Indian tribes and to consult with the Bureau of Indian Affairs to develop plans for reclamation activities on Indian lands. Such a procedure is authorized by section 412(a) of the Act. No significant alternative has been identified other than deferral of

Indian programs until the section 710 study is completed. Such an alternative might effectively preclude reclamation work on Indian lands and would be detrimental to developing a systematic approach for reclamation activities on Indian land during the development of the Abandoned Mine Land Program. Deferral of Indian programs at this time would also be in conflict with the overall structure of Title IV which anticipates Indian tribe participation at the same level as States, section 710 of the Act not to the contrary.

In this regard, Indian tribes were included in the drafting of Parts 872-888 in anticipation of specific legislative authority granting regulatory status to them. If the Congressional authorization is ultimately the same as for States, Part 888 may be deleted. If the authorization differs from that given States, Parts 872-888 can be appropriately amended and Part 888 may also be amended and expanded. It should be observed, however, that Parts 872-888 do not contain any independent authority for Indian tribes to act beyond that allowed by the Act. Part 888 is established to provide an administrative vehicle for the Office to begin necessary reclamation activities on Indian lands in accordance with Parts 872-888 when an Indian tribe desires such activity. The Office is making every effort to complete the study specified in section 710 of the Act as quickly as possible, providing for full participation of affected tribal groups.

INFORMATION COLLECTION PROVISIONS

A number of these regulations require the States and Indian tribes to collect, submit or retain certain information. By publication of these final regulations, this Department has determined that such information is necessary to the performance of its responsibilities under the Act and must be collected, submitted or retained. Accordingly, these requirements, included in regulation §§ 872.4(c), 872.11(b) (2) and (3), 872.12(a), 872.13(a), 877.13(c), 879.13, 879.14(b), 879.15 (a)(3) and (e)(1), 882.12, 882.13, 884.13, 884.15, 886.14, 886.15, 886.17(b), 886.18(c)(2), 886.19, 886.22, 886.23, and 886.24, are adopted, subject to review by the General Accounting Office, pursuant to 44 U.S.C. 3512, to insure that a minimum burden is imposed upon States or Indian tribes in the manner in which such information is proposed to be obtained. The specific reporting provisions in these regulations will be effective November 15, 1978, or on the date of GAO clearance, whichever is earlier.

DRAFTING INFORMATION

The principal authors of these regulations are Paul Reeves, Dan Jones, Ray Booker, Richard Nalbandian and Don O'Bryan, Office of Surface Mining Reclamation and Enforcement; and John Beattie, Office of the Solicitor.

Interested persons may examine the information, comments and legal opinions relied on by the authors during normal business hours in the Office of the Assistant Director, Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement.

Dated: October 18, 1978.

JOAN M. DAVENPORT,
Assistant Secretary—Energy and Minerals.

30 CFR Chapter VII is amended by adding a new Subchapter R to read as set forth above. Subchapter R consists of a new Part 870 which is redesignated from Part 837, and new Parts 872, 874, 877, 879, 882, 884, 886, and 888; the new Parts read as set forth below:

PART 837—[REDESIGNATED AS PART 870]

PART 870—[REDESIGNATED FROM PART 837]

PART 872—ABANDONED MINE RECLAMATION FUNDS

Sec.
872.1 Scope.
872.2 Objectives.
872.4 Responsibilities.
872.5 Definitions.
872.11 Abandoned Mine Reclamation Fund.
872.12 State Abandoned Mine Reclamation Funds.
872.13 Indian Abandoned Mine Reclamation Funds.

AUTHORITY: Secs. 102(g), 201(c), 401, 402(8) and 412, Pub. L. 95-87, 91 Stat. 449, 456, 458 and 466 (30 U.S.C. 1211, 1231, 1232, and 1242).

§ 872.1 Scope.

(a) This Part sets forth general responsibilities for administration of abandoned Mine Land Reclamation Programs and procedures for the Abandoned Mine Reclamation Funds to finance such programs.

(b) Included in this Part are general provisions describing—

(1) The source of money and use of such monies to administer the Abandoned Mine Land Reclamation Program; and

(2) The general responsibilities of agencies of the Federal Government, States, and Indian tribes in the conduct of the programs.

(c) Regulations for implementation of the Rural lands Rural Lands Reclamation Program are the responsibility of the Secretary of Agriculture. The Department of Agriculture has identified this program as the Rural abandoned Mine Program (RAMP).

§ 872.2 Objectives.

The objectives of this Part are to provide an overview of the Abandoned Mine Land Reclamation Program responsibilities and to provide detailed procedures for administration of State, Indian and Federal Abandoned Mine Land Reclamation Funds.

§ 872.4 Responsibilities.

(a) The Director, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary for administration of the Abandoned Mine Reclamation Fund and Abandoned Mine Land Reclamation Program.

(b) The regional Directors of the Office are responsible for—

(1) Conducting reclamation activities where work is performed by the Office using the funds available to the Secretary;

(2) Reviewing and approving annual submissions of project grant applications by States and Indian tribes under approved reclamation programs;

(3) Consulting with Indian tribes for which receipts to the Abandoned Mine Reclamation Fund are allocated to develop an orderly approach to reclamation until such time as the study required by section 710 of the Act is completed and authorities provided for Indian regulatory programs comparable to those of States under section 503 of the Act;

(4) Coordinating projects carried out by the Office with activities carried out under Rural Lands, State and Indian Reclamation Programs conducted with monies from the Fund; and

(5) Consulting with Federal and State agencies as necessary and developing cooperative agreements with the appropriate surface management agency when Federal lands are considered for inclusion in a Federal or State Reclamation Program.

(c) The States are responsible for—

(1) Preparing and submitting a State Reclamation Plan to the Director if the State elects to participate in the Abandoned Mine Land Reclamation Program;

(2) Establishing a State Abandoned Mine Reclamation Fund for use in conducting the State Reclamation Program;

(3) Submitting annual applications for grants, including descriptions of proposed projects;

(4) Submitting requests to the Regional Director for work to be done on noncoal mined lands;

(5) Submitting requests to the Regional Director for construction of specific facilities in communities impacted by coal development;

(6) Conducting reclamation work in accordance with grant agreements;

(7) Consulting with State and Federal agencies as necessary and developing cooperative agreements with the appropriate surface management agency when State or Federal lands

are considered for inclusion in a State Reclamation Program; and

(8) Submitting reports annually to the Regional Director describing progress on previously funded projects.

(d) The Secretary of Agriculture through the Soil Conservation Service is responsible for—

(1) Promulgating regulations for conducting the Rural Lands Reclamation Program;

(2) Submitting annual requests to the Director for allocation of moneys for use in the Rural Lands Reclamation Program;

(3) Submitting annual reports to the Director describing progress of work previously funded; and

(4) Coordinating the Rural Lands Reclamation Program with State and Indian Reclamation Programs and with reclamation activities conducted by the Office.

§ 872.5 Definitions.

(a) *The Abandoned Mine Reclamation Fund*, or *Fund* is a trust fund established on the books of the U.S. Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

(b) *Allocate* means the administrative identification in the records of the Office of moneys in the Fund for a specific purpose; e.g., identification of moneys for exclusive use by a State.

(c) *Emergency* means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

(d) *Expended* means that moneys have been paid out by a State or Indian tribe for work that has been accomplished or services rendered.

(e) *Extreme danger* means a condition that could reasonably be expected to cause substantial physical harm to persons property, or the environment and to which persons or improvements on real property are currently exposed.

(f) *Indian Abandoned Mine Reclamation Fund*, or *Indian Fund*, means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

(g) *Indian reclamation program* means a program established by an Indian tribe in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

(h) *Reclamation activities* means restoration, reclamation, abatement, control, or prevention of adverse effects of mining.

(i) *Reclamation plan* means a plan submitted and approved under 30 CFR Part 884.

(j) *State Abandoned Mine Reclamation Fund* or *State Fund*, means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

(k) *State reclamation program* means a program established by a State in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

§ 872.11 Abandoned mine reclamation fund.

(a) Revenue to the Fund shall include—

(1) Reclamation fees collected under section 402 of the Act and 30 CFR Part 870;

(2) Amounts collected by the Office from charges for use of land acquired or reclaimed with moneys from the Fund under 30 CFR Part 879;

(3) Moneys recovered by the Office through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under 30 CFR Part 882;

(4) Moneys recovered by the Office from the sale of lands acquired with moneys from the Fund or by donation under 30 CFR Part 879; and

(5) Moneys donated to the Office for the purpose of abandoned mine land reclamation.

(b) Moneys deposited in the Fund and appropriated by the Congress shall be used for the following purpose—

(1) An amount not exceeding 10 percent of the reclamation fees collected each quarter, up to a maximum of $10,000,000 each year, shall be used to finance the Small Operator Assistance Program under 30 CFR Part 795.

(2) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises the Office in writing that it does not intend to submit a State Reclamation Plan, no moneys shall be allocated to that State. Amounts allocated to a State that have not been granted to the State within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the State that have not been expended within 3 years from the date of allocation may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(3) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian Reclamation Plan. If an Indian tribe advises the Office in writing that it does not intend to submit an Indian Reclamation Plan, no moneys shall be allocated to that tribe. Amounts allocated to Indian lands that have not been granted to the Indian tribe within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the Indian tribe that have not been expended within 3 years from the date of allocation may be withdrawn from the Indian tribe if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(4) An amount not exceeding 20 percent of the moneys deposited in the Fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Lands Reclamation Program.

(5) All amounts not used for the above purposes shall be available to the Director for the following purposes—

(i) Acquisition, reclamation, and restoration of land and water resources adversely affected by past coal mining.

(ii) Filling of voids and sealing of tunnels, shafts, and entryways and the reclamation of the adverse surface impacts of underground or surface mining for other minerals and materials, including acquisition of land and water if required. This work shall be done only with those moneys allocated or available for allocation to a State or Indian lands under paragraphs (b) (2) or (3) of this section and at the request of the Governor of a State or the Indian tribe.

(iii) Studies by contract with public or private organizations to provide information, advice, or technical assistance, including research, development, and demonstration projects.

(iv) Reclamation fee collection activities and other administrative expenses necessary to accomplish the purposes of Title IV of the Act.

(v) Reclamation grants to States or Indian tribes in excess of amounts provided under paragraph (b) (2) or (3) of this section.

(vi) Cooperative projects to compile information required for the preparation of State and Indian reclamation plans, as specified in Part 884.13(f) of this subchapter. This work shall be done only with those moneys allocated or available for allocation to a State or Indian tribe and at the request of the Governor of a State or the Indian tribe.

§ 872.12 State abandoned mine reclamation funds.

(a) An account to be known as the State Abandoned Mine Reclamation Fund shall be established in each State with an approved State Reclamation Plan. The State Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the State Fund shall include—

(1) Amounts granted to the State by the Office for purposes of conducting the approved State Reclamation Plan under 30 CFR Part 886.

(2) Moneys collected by the State from charges for uses of lands acquired or reclaimed with moneys from the State Fund under 30 CFR Part 879.

(3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the State Fund under 30 CFR Part 882.

(4) Moneys recovered by the State from the sale of lands acquired with moneys from the State Fund under 30 CFR Part 879.

(5) Such other moneys as the State decides should be deposited in the State Fund for use in carrying out the State Reclamation Program.

(c) Moneys deposited in the State Fund shall be used to carry out the State Reclamation Plan approved under 30 CFR Part 884.

§ 872.13 Indian abandoned mine reclamation funds.

(a) An account to be known as the Indian Abandoned Mine Reclamation Fund shall be established by each Indian tribe with an approved Indian Reclamation Plan. The Indian Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the Indian Fund shall include—

(1) Amounts granted to the Indian tribe by the Office for purposes of conducting the approved Indian Reclamation Plan.

(2) Moneys collected by the Indian tribe from charges for uses of land acquired or reclaimed with moneys from the Indian Fund under 30 CFR Part 879.

(3) Moneys recovered by the Indian tribe through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the Indian Fund under 30 CFR Part 882.

(4) Moneys recovered by the Indian tribe from the sale of lands acquired with moneys from the Indian Fund under 30 CFR Part 879.

(5) Such other moneys as the Indian tribe decides should be deposited in the Indian Fund for use in carrying out the Indian Reclamation Program.

(c) Moneys deposited in the Indian Fund shall be used to carry out reclamation activities under 30 CFR Part 888.

PART 874—GENERAL RECLAMATION REQUIREMENTS

Sec.

874.1 Scope.
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874.13 Reclamation objectives.
874.14 Reclamation project evaluation.

AUTHORITY: Secs. 201(c), 403, 404, 409, and 412(a), Pub. L. 95-87, 91 Stat. 449, 458, 459, 465, and 466 (30 U.S.C. 1211, 1233, 1234, 1239, and 1242).

§ 874.1 Scope.

This Part establishes general requirements for the selection of work to be performed with moneys from the Abandoned Mine Reclamation Fund, and State or Indian Abandoned Mine Reclamation Funds. It includes land and water eligibility requirements, reclamation project objectives and standards, and project selection and evaluation factors.

§ 874.2 Objectives.

The objectives of this Part are to establish conditions for the use of Abandoned Mine Reclamation Funds that are common to approved State and Indian Reclamation Programs, the Rural Lands Reclamation Program, and the reclamation activities conducted or funded directly by the Office.

§ 874.5 Definitions.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water:

(a) Where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

(b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

§ 874.11 Applicability.

The provisions of this Part apply to all reclamation projects to be carried out with money from the Fund or a State or Indian Fund as defined by Part 872 of this subchapter.

§ 874.12 Eligible lands and water.

(a) Lands and water are eligible for reclamation activities if:

(1) They were mined or affected by mining processes;

(2) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under 30 CFR 886 and 888.

(b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities under a State or Indian Reclamation Program if the Director finds in writing that—

(1) The conditions of paragraph (a) of this section have been met;

(2) The reclamation has been requested by the Governor of the State or head of the tribal governing body;

(3) All reclamation with respect to abandoned coal mine land and water has been accomplished within the State or Indian lands in which they are located or the reclamation is necessary for the protection of the public health and safety; and

(4) Moneys allocated to the State or Indian tribe under § 872.11(b) (2) and (3) are available for the work.

§ 874.13 Reclamation objectives and priorities.

Reclamation projects shall meet one or more of the objectives stated in this section. The objectives are stated in the order of priority with the highest

priority first. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives.

(a) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.

(b) Protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.

(c) Restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

(d) Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.

(e) Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.

(f) Development of publicly owned land adversely affected by past coal mining practices, including land acquired under 30 CFR Part 879, for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(g) Protection of the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. However, upon the request of the Governor of a State or head of an Indian tribe, such work may be under taken before the priorities related to past coal mining have been fulfilled.

(h) Protection of the public from hazards to health and safety from the adverse effects of past noncoal mining practices.

(i) Restoration of the environment degraded by the adverse effects of past noncoal mining.

(j) Construction of public facilities in communities impacted by coal development if the Governor of a State or head of an Indian tribe certifies that all other objectives of the fund have been met, the available impact funds are inadequate for such construction consistent with § 884.12(d) and the Director concurs.

§ 874.14 Reclamation project evaluation.

(a) Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under § 874.13. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include—

(1) The need for reclamation work to accomplish one or more specific reclamation objectives as stated in § 874.13.

(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

(3) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to—

(i) Protection of human life, health, or safety.

(ii) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

(iii) Protection of public or private property.

(iv) Abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.

(v) Improvement of environmental conditions which may be considered to generally enhance the quality of human life.

(vi) Improvement of the use of natural resources, including post-reclamation land uses which—

(*a*) Increase the productive capability of the land to be reclaimed.

(*b*) Enhance the use of surrounding lands consistent with existing land use plans.

(*c*) Provide for construction or enhancement of public facilities.

(*d*) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.

(vii) Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

(6) The availability of additional coal or other mineral or material resources within the project area which—

(i) Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(ii) Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

(7) The acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.

(8) The probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.

(b) States, Indian tribes, or Federal agencies administering reclamation programs and projects shall incorporate the evaluation factors stated in paragraph (a) into the procedures and processes for selecting projects in a manner which they deem appropriate. Additional factors may be developed to meet specific or unique needs. Specific values may be assigned to the factors stated in paragraph (a). All evaluation factors are subject to the plan approval process in 30 CFR Part 884.

PART 877—RIGHTS OF ENTRY

Sec.
877.1 Scope.
877.11 Consent to entry.
877.12 Entry for studies or exploration.
877.13 Entry and consent to reclaim.
877.14 Entry for emergency reclamation.

AUTHORITY: Secs. 201(c), 407 (a) and (b), 410 and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, and 466 (30 U.S.C. 1211, 1237, 1240, and 1242).

§ 877.1 Scope.

This part establishes procedures for entry to lands or property by the Office, or a State, or Indian tribe under an approved Reclamation Plan, for the purposes of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and for the purpose of performing reclamation work.

§ 877.11 Consent to entry.

The Office, State, or Indian tribe shall take all reasonable actions to

obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or his authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement shall not include any commitment by the Office, State, or Indian tribe to perform reclamation work nor to compensate the owner for entry.

§ 877.12 Entry for studies or exploration.

(a) The Office, State, or Indian tribe or their agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasiblility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

(b) If the owner of the land to be entered under this section will not provide consent to entry, the Office, State, or Indian tribe shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

(c) Entry required to investigate and explore reported emergency conditions will be governed by the provisions of § 877.14(c).

§ 877.13 Entry and consent to reclaim.

(a) The Office, State, or Indian tribe or their agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

(b) Prior to entry under this section, the Regional Director, State, or Indian tribe shall find in writing with supporting reasons that—

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or

(4) The owner will not give permission for the Office, the State, or Indian tribe, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The Regional Director, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

§ 877.14 Entry for emergency reclamation.

(a) The Office, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, the Regional Director shall make a written finding with supporting reasons that—

(1) An emergency exists constituting a danger to the public health, safety, or general welfare;

(2) Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary and;

(3) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. The Regional Director shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical. The notice shall be mailed, return receipt requested, to the owner, if known, and shall include a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this section may be inspected or obtained.

(d) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry.

PART 879—ACQUISTION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER

Sec.

879.1 Scope.
879.11 Land eligible for acquisition.
879.12 Procedures for acquisition.
879.13 Acceptance of gifts of land.
879.14 Management of acquired land.
879.15 Disposition of reclaimed land.

AUTHORITY: Sec. 201(c); 407 (c), (d), (e), (f), (g), and (h); and 412(a), Pub. L. 95-87, 91 Stat. 449, 463, 464, and 466 (30 U.S.C. 1211, 1237, and 1242).

§ 879.1 Scope.

This Part establishes procedures for acquisition, management, and disposition of eligible land and water for reclamation purposes by the Office or a State or Indian tribe under an approved Reclamation Plan. It also establishes requirements for the collection of charges for the use of acquired land and disposition of the proceeds from the use or sale of acquired land.

§ 879.11 Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired with moneys from the Fund by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to approval of the acquisition of such land, the Regional Director shall find in writing that acquisition is necessary for successful reclamation and that—

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities such as a mine drainage treatment plant or a re-

located stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to approval of the acquisition of such sites, the Regional Director shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.

(c)(1) Land adversely affected by past mining practices may be acquired by the Office if the Director finds in writing that acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for—

(i) Persons disabled as the result of employment in the mines or work incidental thereto;

(ii) Persons displaced by acquisition of land under these regulations;

(iii) Persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency for which the Regional Director has made the determination required by § 877.14;

(iv) Persons dislocated as the result of natural disasters or catastrophic failures from any cause.

(2) The Director may acquire such land in the name of the United States directly or through a State or Indian tribe, any department, agency, or instrumentality of a State or Indian tribe, or any public body or nonprofit organization designated by a State or Indian tribe.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the Office if the Director finds that acquisition is necessary under § 874.12(b).

(e) The Office, State or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

§ 879.12 Procedures for acquisition.

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser by the Office, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference 1973).

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The Office, State, or Indian tribe which acquires land under this part shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq; 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq.; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.

(e) Title to all interests in land acquired by the Office shall be in the name of the United States.

(f) Title to all interests in land acquired by a State shall be in the name of the State and shall be recorded in accordance with applicable State law and regulation.

(g) Title to all interests in land acquired by an Indian tribe shall, where authorized by law, be held in the name of the United States in trust for the benefit of that tribe and shall be recorded in the appropriate office of the Bureau of Indian Affairs. In absence of a trust authorization, title shall be held in the name of the tribe and shall be recorded in accordance with applicable law.

(h) Property acquired by the Office under this part shall be included in the Annual Report of Real Property which shall be compiled and filed in accordance with IPMR 114-3.2. The report shall include real property acquired by donation.

§ 879.13 Acceptance of gifts of land.

(a) The Director, in accordance with Department of Justice procedures for the acquisition of real property, or a State or Indian tribe under an approved Reclamation Plan, may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(b) Offers to make a gift of such land or interest in land shall be in writing and shall include—

(1) A statement of the interest which is being offered.

(2) A legal description of the land and a description of any improvements on it.

(3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.

(4) A statement that—

(i) The offeror is the record owner of the interest being offered.

(ii) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.

(iii) There are no adverse claims against the interest offered.

(iv) There are no unredeemed tax deeds outstanding against the interest offered.

(v) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

(5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Surface Mining Control and Reclamation Act of 1977." Title to donated land shall be in the name of the United States if the donation is to the Office or in the name of the State if the donation is to a State. Title to land donated to an Indian tribe shall, where authorized by law, be taken in the name of the United States in trust for the benefit of that tribe. In the absence of a trust authorization, title shall be taken in the name of the tribe.

§ 879.14 Management of acquired lands.

(a) Land acquired under this Part may be used pending disposition under § 879.15 for any lawful purpose that is not inconsistent with the reclamation

activities and post-reclamation uses for which it was acquired.

(b) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Office, State, or Indian tribe for providing the benefit, whichever is appropriate. The Regional Director, State, or Indian tribe may waive the fee if found in writing that such a waiver is in the public interest.

(c) All use fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872, unless previously appropriated or otherwise authorized by the Congress, State legislature, or tribal governing body for the specific purpose of operating and maintaining improvement of the land.

§ 879.15 Disposition of reclaimed lands.

(a) Prior to the disposition of any land acquired under this Part, the Regional Director, State, or Indian tribe which acquired the land shall—

(1) Publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person.

(2) Hold a public hearing if requested as a result of the public notice. The Regional Director, State, or Indian tribe may determine that a hearing is appropriate even if a request is not received. It shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least 30 days before the hearing. All comments received at the hearing shall be recorded.

(3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State, or Federal laws or regulations which apply.

(b) The Director may transfer the administrative responsibility for land acquired by the Office to any other Federal Department or agency, with or without cost to that Department or agency. The agreement, including amendments, under which a transfer is made shall specify—

(1) The purposes for which the land may be used which shall be consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land shall revert to the Office if, at any time in the future, the Director finds that the land is not used for the purposes specified.

(c) A State or Indian tribe may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the State or Indian tribe with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify—

(1) The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land will revert to the State or Indian tribe which acquired the land if, at any time in the future, the land is not used for the purposes specified.

(d) A State or Indian tribe may, with approval by the Regional Director, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office. The State or Indian tribe which transfers land to the Office under this paragraph shall have a preference right to purchase such land from the Office after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(e) The Director may sell any land acquired and reclaimed under this Part except that acquired under § 879.11(c) to the State or local government within whose borders the land is located or to an Indian tribe if the land is within the exterior boundaries of an Indian reservation.

(1) Before reclaimed land is sold to a State, local government, or Indian tribe, the purchaser shall state in writing the public purposes for which the land is to be used. The public purpose shall be considered valid if it is authorized as a public function by appropriate State law or Indian tribal ordinance and is consistent with the conditions under which the land was acquired.

(2) The price to be paid by the State, local government, or Indian tribe shall be the fair market value of the land in its reclaimed condition. The land may be sold at a lower price negotiated by the Director, but the price shall not be less than the cost to the United States for acquiring and reclaiming the land.

(3) The sales agreement for land sold under this paragraph shall state valid public purposes for which the land may be used. If, at any time in the future, the land is not used for the purposes stated, all right and title to or interest in such land shall revert to the United States.

(f) The Director may transfer or sell land acquired under § 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to any Indian tribe, or to any person, firm, association or corporation.

(1) The transfer or sale shall not be made unless the Director finds in writing that the transfer or sale is an integral and necessary element of an economically feasible plan for the project for which the land was acquired.

(2) The price at which land is sold under paragraph (f) of this section shall be negotiated between the Director and the purchaser. The price maybe below the fair market value if economically necessary for the success of the project.

(3) If the price at which the land is sold is below the fair market value of the land, or if the land is transferred at no cost to the recipient, the recipient shall agree in advance that no portion of the difference between the amount paid and the fair market value will accrue as a profit, or as an offset to other business losses, to any private person, firm, association or corporation.

(4) The transfer or sales agreement for land disposed of under paragraph (f) of this section shall state the purposes for which the land was acquired and will be used. If, at any time in the future the land is not used for the purposes stated, all right, title and interest in such land shall revert to the United States.

(g) The Director, a State, or Indian tribe with the approval of the Regional Director may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.

(1) Land shall be sold by public sale only if it is found that retention by the Office, State, or Indian tribe, or disposal under other paragraphs of this section, is not in the public interest.

(2) Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum—

(i) Publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state

the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

(ii) Provisions for sealed bids to be submitted prior to the sale date followd by an oral auction open to the public.

(h) All moneys received from disposal of land under this Part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872.

PART 882—RECLAMATION ON PRIVATE LAND

Sec.
882.1 Scope.
882.11 Operations on private land.
882.12 Appraisals.
882.13 Liens.
882.14 Satisfaction of liens.

AUTHORITY: Sec. 201(c), 407 (a) and (b), 408, 410 and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, 465, and 466 (U.S.C. 1211, 1237, 1238, 1240, and 1242).

§ 882.1 Scope.

This Part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Office, State, or Indian tribe.

§ 882.11 Operations on private land.

Reclamation activities may be carried out on private land if a consent to enter is obtained under § 877.11, or if entry is required and made under §§ 877.13 or 877.14.

§ 882.12 Appraisals.

(a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained by the Office, State, or Indian tribe from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (a) of this section and shall state the market value of the land as reclaimed.

(c) The landowner is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed in accordance with § 882.13.

(d) Appraisals for privately owned land which fall under § 882.13(a) (1), (2), and (3) may be obtained from either an independent or staff professional appraiser.

§ 882.13 Liens.

(a) The Regional Director, State, or Indian tribe which performs the reclamation work shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the appraisals obtained under § 882.12.

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The Regional Director, State, or Indian tribe may waive the lien if the cost of filing it, including indirect costs to the Office, State, or Indian tribe, exceeds the increase in fair market value as a result of reclamation activities.

(3) The lien may be waived by the Regional Director, State or Indian tribe if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

(b) If a lien is to be filed, the Office, State, or Indian tribe shall, within 6 months after completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments against land and for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under § 882.12. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

§ 882.14 Satisfaction of liens.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph.

(b) The Office, State, or Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

PART 884—STATE RECLAMATION PLANS

Sec.
884.1 Scope.
884.2 Objectives.
884.11 State eligibility.
884.12 Activities eligible for inclusion in State Reclamation Plan.
884.13 Content of proposed State Reclamation Plan.
884.14 State Reclamation Plan approval.
884.15 State Reclamation Plan amendment.
884.16 Withdrawal of Plan approval.

AUTHORITY: Secs. 201(c), 402(g)(2), 403, 404, 405, 407, 409 and 412(a), Pub. L. 95-87, 91 Stat. 449, 458, 459, 462, 465, and 466 (30 U.S.C. 1211, 1232, 1233, 1234, 1235, 1237, 1239 and 1242).

§ 884.1 Scope.

This Part establishes the procedures and requirements for the preparation, submission and approval of State Reclamation Plans. A State must have an approved State Reclamation Plan to be eligible to administer a State Abandoned Mine Land Reclamation Program under this subchapter and to receive grants for abandoned mine land reclamation projects under 30 CFR Part 886.

§ 884.2 Objectives.

The objectives of this Part are to encourage maximum participation by the States in the reclamation of eligible land and water through effective use of moneys in the Abandoned Mine Reclamation Fund and to—

(a) Establish uniform guidelines and procedures for preparation and submission of proposed State Reclamation Plans; and

(b) Insure that State Reclamation Plans meet the requirements of Title IV of the Act.

§ 884.11 State eligibility.

A State is eligible to submit a State Reclamation Plan if it has eligible land and water as defined in § 874.12 within its boundaries. A State is eligible for a State Reclamation Plan to be approved by the Director if it has an approved State regulatory program under section 503 of the Act and meets the other requirements of this Chapter and the Act.

§ 884.12 Activities eligible for inclusion in State reclamation plan.

The State Reclamation Plan may provide for any or all of the following activities—

(a) Acquisition and reclamation and restoration of land and water resources adversely affected by past coal mining practices in accordance with the reclamation objectives stated in § 874.13.

(b) Acquisition and filling of voids and sealing tunnels, shafts and entryways and the reclamation of the adverse surface impacts of underground or surface mining for minerals and materials other than coal. The plan shall not, however, provide for reclamation of such land with moneys from the State Fund until all reclamation with respect to coal mining has been accomplished or the Governor of the State has requested and the Director has determined that reclamation is necessary for the protection of the public health and safety under § 874.12(b).

(c) Acquisition of land which is an integral and necessary part of an economically feasible plan to construct or rehabilitate housing under § 879.11(c).

(d) Construction of specific public facilities in communities impacted by coal development. The plan shall not, however, provide for construction of such facilities with moneys from the State Fund until the Governor of the State has certified, and the Director has concurred, that—

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the act of October 20, 1976, Pub. L. 94-565 (90 Stat. 2662) are inadequate for such construction.

§ 884.13 Content of proposed State reclamation plan.

Each proposed State Reclamation Plan shall be submitted to the Director in writing and shall include as a minimum the following information:

(a) A designation by the Governor of the State of the agency authorized to administer the State Reclamation Program and to receive and administer grants under 30 CFR Part 886.

(b) An opinion of the State's chief legal officer that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the act, the regulations of this subchapter and the State Reclamation Plan.

(c) A detailed description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including, but not limited to—

(1) The goals and objectives of the State Reclamation Program;

(2) Reclamation project ranking and selection procedures;

(3) Policies regarding the coordination of reclamation work among the State Reclamation Program, the Rural Lands Reclamation Program administered by the Soil Conservation Service and the reclamation programs of any Indian tribes located within the State;

(4) Policies and procedures regarding land acquisition, management and disposal under 30 CFR Part 879.

(5) Policies and procedures regarding reclamation on private land under 30 CFR Part 882;

(6) Policies and procedures regarding rights of entry under 30 CFR Part 877; and

(7) Policies regarding public participation and involvement in the State Reclamation Program.

(d) A detailed description of the administrative and management structure to be used in conducting the reclamation program including, but not limited to—

(1) A description of the organization of the designated agency and of its relationship to other State organizations or officials which will participate in conducting or managing the State Reclamation Program.

(2) A description of personnel staffing policies which will govern the assignment of personnel to the State Reclamation Program.

(3) A description of the purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O.

(4) A description of the accounting system to be used by the agency, including specific procedures for the operation of the State Fund required by § 872.12

(e) A detailed description of the extent of public involvement in the preparation of the proposed State Reclamation Plan. At a minimum, the public shall be given an opportunity to inspect and comment on the proposed plan in the counties having eligible land and water within their boundaries before it is submitted for approval. The comments shall be recorded and considered.

(f) A general description of the reclamation activities to be conducted under the State Reclamation Plan, including as a minimum—

(1) A general description of the known or suspected eligible land and water within the State which require reclamation, including a map showing their general location at a scale of 1:250,000 or larger;

(2) A general description of the problems occurring on the eligible land and water identified on the map and how the plan proposes to deal with each;

(3) A general description of how the land to be reclaimed and the proposed reclamation relates to the existing and planned uses of lands in surrounding areas;

(4) A table summarizing the quantities (e.g. acres, miles) of land and water affected by the problems identified under paragraph (f)(2) of this section and an estimate of the quantities proposed for reclamation during each year covered by the plan;

(5) A general narrative description of the social, economic and environmental conditions prevailing in the different geographic areas of the State where reclamation is planned including, but not limited to—

(i) The economic base;

(ii) The primary sociologic and demographic characteristics;

(iii) Significant esthetic, historic or cultural, and recreational values;

(iv) Hydrology, including any surface or underground water quality or quantity problems associated with past mining;

(v) Flora and fauna, including endangered or threatened plants, fish or wildlife and their habitats;

(vi) Underlying or adjacent beds of commercially mineable coal and other minerals and materials and projected methods of extraction; and

(vii) Anticipated benefits from reclamation.

§ 884.14 State reclamation plan approval.

(a) The Director shall approve, disapprove or otherwise act upon a State Reclamation Plan within 60 days after it is submitted or after a State Regulatory Program is approved, whichever is later. The Director shall not approve a State Reclamation Plan until he has—

(1) Held a public hearing on the plan within the State which submitted it. The Director may waive the public hearing if he finds that the State has given the public adequate notice and opportunity to comment in public hearings and that the record of such hearings does not reflect major unresolved controversies.

(2) Solicited and considered the views of other Federal agencies having an interest in the plan.

(3) Determined that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan.

(4) Determined that the proposed plan meets all the requirements of this subchapter.

(5) Determined that the State has an approved State regulatory program.

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) If the Director disapproves a proposed State reclamation plan, he shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State Reclamation plan at any time under the procedures of this section.

§ 884.15 State Reclamation Plan amendment.

A State may, at any time, submit to the Director a proposed amendment or revision to its approved Plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the State shall include a description of the extent of public involvement in the preparation of the amendment or revision. The Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State Reclamation Plan.

§ 884.16 Withdrawal of plan approval.

(a) The Director shall withdraw approval of a State Reclamation Plan, in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part; or

(2) The State is not conducting the State reclamation program in accordance with the Plan or a Reclamation Program Grant Agreement.

(b) If the Director determines that plan approval should be withdrawn, he shall notify the State by mail, return receipt requested, of his proposed action. The notice shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State, and performance of remedial action prior to the notice of withdrawal of Reclamation Plan approval.

(c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.

PART 886—STATE RECLAMATION GRANTS

Sec.

886.1 Scope.
886.2 Objectives.
886.3 Authority.
886.4 [Reserved].
886.5 Definitions.
886.11 Eligibility for grants.
886.12 Coverage and amount of grants.
886.13 Grant period.
886.14 Submission of estimated annual budgets.
886.15 Grant application procedures.
886.16 Grant agreements.
886.17 Grant amendments.
886.18 Grant reduction, suspension and termination.
886.19 Audit.
886.20 Administrative procedures.
886.21 Allowable costs.
886.22 Financial management.
886.23 Reports.
886.24 Records.
886.25 Disclosure of information.

AUTHORITY: SEC. 201(c), 401 (a) and (c), 402(g), and 412(a), Pub. L. 95-87, 91 Stat. 449, 456, 458, and 466 (30 U.S.C. 1211, 1231, 1232, and 1242).

§ 886.1 Scope.

This part set forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the plan as approved.

§ 886.2 Objectives.

The objectives of this part are to assure that adequate information is provided by the State to support its application for a grant and that funds granted to the State are handled in accordance with applicable Federal laws and regulations.

§ 886.3 Authority.

(a) The Regional Director is authorized to approve or disapprove applications for grants under this part if the totla amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to the State under § 872.11(b)(2). The Regional Director is responsible for assuring that any required approvals by the Director are obtained before the grant is made.

(b) The Director is authorized to approve, or to authorize the Regional Director to approve, additional grants to a State from the moneys available to the Director under § 872.11(b)(5).

§ 886.5 Definitions.

Agency means the State agency designated by the Governor to administer the State reclamation program and to receive and administer grants under this part.

§ 886.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State Reclamation Plan approved under 30 CFR 884.

§ 886.12 Coverage and amount of grant.

(a) An agency may use moneys granted under this part to administer the approved State reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover direct costs to the agency for services and materials obtained from other State agencies or local governments if approved by the Regional Director.

(b) Grants shall be approved for 100 percent of the total agreed upon costs for reclamation of eligible land and water, construction of public facilities, program administration as specified in § 886.21 and the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes.

(c) Grants shall be approved for up to 90 percent of the total agreed upon costs for acquisition of land or interests in land and any mineral or water rights associated with the land. Grants for proposed reclamation projects on these lands shall be approved in accordance with § 886.12(b).

§ 886.13 Grant period.

The grant funding period shall not exceed 3 years. However, the grant period for administrative costs of the authorized agency shall be for 1 year.

§ 886.14 Submission of estimated annual budgets.

The agency shall cooperate with the Regional Director in the development of advance budget estimates for use by the Director in the preparation of his requests for appropriation of moneys from the Fund. The schedule for such estimates shall be determined by the Director on an annual basis.

§ 886.15 Grant application procedures.

(a) The agency shall submit its grant application to the Regional Director no later than July 1 for funding during the fiscal year commencing October 1. An application for funding during the fiscal year in which a State Reclamation Plan is approved may be submitted with the proposed Plan for approval when the Plan is approved. Office of Management and Budget Circular No. A-95 notification and review requirements shall be fulfilled for each project included in the grant application.

(b) The agency shall use the application format for Federal Assistance Application for Construction Programs and other procedures specified in Office of Management and Budget

Circular No. A-102, Attachment M. A preapplication is not required if the total of the grant requested is within the amounts allocated to the State under § 872.11(b)(2).

(1) Part I of the application shall be a single Standard Form 424 covering all administrative costs and projects included in the grant application. Section IV of the form shall include a listing of the individual projects to be funded. Those individual projects that are part of a multiphased project should include information relative to the scope, magnitude and total costs of the entire project proposed for funding. Program administration cost as specified in § 886.12(a) may be considered as a single project and identified as Program Administration Costs.

(2) Parts II, III, and IV of the application shall be completed for each individual project in accordance with Office of Management and Budget Circular No. A-102.

(i) Complete copies of plans and specifications for projects shall not be required before the grant is approved. The Regional Director may review such plans and specifications in the agency office or on the project site.

(ii) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on how the land will be used after reclamation shall be included in part IV of the application.

(c) The Regional Director shall notify the agency of the status of the application within 30 days after receipt of a complete application. If the application is not approved, the Regional Director shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application.

§ 886.16 Grant agreement.

(a) If the Regional Director approves an agency's grant application, the Regional Director shall prepare a grant agreement which includes—

(1) A statement of the work to be covered by the grant;

(2) A statement of the approvals of specific actions as required under this subchapter or of the conditions to be met before such approvals can be given if moneys are included in the grant for such actions;

(3) The amounts approved for each individual project included in the grant application; and

(4) Allowable transfers of funds to other State agencies.

(b) The Regional Director may allow an agency to assign functions and funds to other State agencies. The Regional Director shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds and reporting.

(c) The Regional Director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 weeks after receipt, or within an extension of time granted by the Regional Director.

(d) The Regional Director shall sign the agreement upon its return from the agency or when funds are available for the grants, whichever is later, and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds at the time the Regional Director signs the agreement.

(e) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

§ 886.17 Grant amendments.

(a) A grant amendment is a written alteration of the amount, terms, conditions, budget, time, administrative, technical, financial or other provisions of the grant agreement, whether accomplished on the initiative of the agency or the Regional Director.

(b) The agency shall promptly notify the Regional Director in writing of events or proposed changes which may require a grant amendment. At a minimum, the agency shall notify the Regional Director in advance of—

(1) Planned changes in the scope or objective of any individual project, whether or not the change will result in a change in the total cost for the project.

(2) Changes will result in an increase or decrease in the total cost of any individual project of more than $5,000 or 5 percent of the budgeted amount, whichever is greater. Changes of lesser amounts may be made by the agency without advance notification or approval if the change can be made within the total grant to the agency and does not involve a change in the scope or objective of the projects involved.

(c) The Regional Director shall notify the agency of the status of each proposed amendment within 30 days of receipt thereof. The procedures of § 886.16 shall be followed.

§ 886.18 Grant reduction, suspension, and termination.

(a) Conditions for reduction, suspension, or termination.

(1) If an agency violates the terms of a grant agreement or an approved Reclamation Plan, the Regional Director may reduce, suspend, or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within 3 years from the date of allocations, the director may reduce the grant in accordance with § 872.11(b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under Part 735 of this Chapter is terminated, the Regional Director shall terminate the grant awarded under this Part.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Regional Director shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d-1). Nondiscrimination in federally assisted programs, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 41 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in federally assisted programs.

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this Chapter, the Regional Director shall terminate the grant.

(6) If an agency fails to submit reports required by this subchapter or Part 705 of this Chapter, the Regional Director shall terminate the grant.

(b) Grant reduction, suspension, and termination procedures.

(1) The Regional Director shall give at least 10 days written notice to the agency by mail, return receipt requested, of intent to reduce, suspend or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination,

suspension, or reduction of the grant in writing by mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon notification of intent to terminate the grant the agency shall not make any new commitments without the approval of the Regional Director.

(6) The Regional Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) *Appeals.* (1) Within 30 days of the Regional Director's decision to reduce or terminate a grant, the agency may appeal the decision to the Director.

(2) The agency shall include in the appeal—

(i) A statement of the decision being appealed; and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(2) The Director shall act upon appeals within 30 days of their receipt. The decision of the Director shall be a final decision by the Department of the Interior.

§ 886.19 Audit.

The agency shall arrange for independent audit at least once every 2 years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, Functions* published by the Comptoller General of the United States and audit guides provided by the Department of the Interior.

§ 886.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A-102.

§ 886.21 Allowable costs.

(a) Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs and up to 90 percent of the costs of the acquisition of land.

(b) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74-4.

(c) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement.

(d) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(e) Costs must not be allocated or included as a cost of any other federally assisted program.

§ 886.22 Financial management.

(a) The agency shall account for grant funds in accordance with requirements of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.23 Reports.

(a) The agency shall, for each grant made under this Part, submit annually to the Regional Director a Financial Status Report in accordance with Office of Management and Budget Circular No. A-102, Attachment H.

(b) The agency shall, in each year after the first grant, submit to the Regional Director, no later than September 1, a performance report prepared according to Office of Management and Budget Circular No. A-102, Attachment H. The report shall include—

(1) For each project previously funded and completed during the year, a brief description of the project and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed, and a summary of achieved benefits.

(2) For each project previously funded but not yet completed, a brief description of the project and the status of reclamation work, the project location, landowner's name, and a summary of expected benefits.

(3) For any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land.

(4) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

(c) The reports required under this section shall reflect revenue deposited in the State Abandoned Mine Reclamation Fund under § 872.12.

§ 886.24 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount and disposition by the agency of all assistance received for the program.

(2) The total direct and indirect costs of the program for which the grant was awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

PART 888—INDIAN RECLAMATION PROGRAM

Sec.
888.1 Scope.
888.2 Objectives.
888.11 Interim procedures.

AUTHORITY: Secs. 201(c), 405(k), 412(a), and 710, Pub. L. 95-87, 91 Stat. 449, 460, 466, and 523 (30 U.S.C. 1211, 1235, 1242, and 1300).

§ 888.1 Scope.

This part is reserved for any additional or unique regulations that may be required as a result of the special study report submitted pursuant to section 710 of the Act and to achieve the purpose of the Act on Indian lands. Because of the special jurisdictional status of Indian lands, general responsibilities for administration of Indian Reclamation Programs are set forth on an interim basis.

§ 888.2 Objectives.

(a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian lands.

(b) Upon completion of the special study report and enactment of any required legislation, this Part will be either deleted and supplemented by the other Parts of this chapter dealing with State and Indian Abandoned Reclamation Programs or expanded as re-

quired to achieve the purposes of the Act.

§ 888.11 Interim procedures.

(a) The Regional Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian land and to carry out such projects pursuant to 30 CFR Parts 872 through 882.

(b) The Regional Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian land on all reclamation activities carried out on Indian land under this subchapter.

(c) If a proposal is made by an Indian tribe and approved by the Regional Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to the Indian tribe under § 872.11(c)(3).

(d) Approved projects may be carried out directly by the Regional Director or through such arrangements as the Regional Director may make with the Bureau of Indian Affairs or other agencies.

[FR Doc. 78-30002 Filed 10-24-78; 8:45 am]

Federal Register

WEDNESDAY, OCTOBER 25, 1978
PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

■

REQUIREMENTS FOR PROVISIONS OF SERVICES TO PERSONS UNABLE TO PAY AND COMMUNITY SERVICES BY ASSISTED HEALTH CARE FACILITIES

Proposed Rulemaking; Public Hearing

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

[42 CFR Part 124]

REQUIREMENTS FOR PROVISION OF SERVICES TO PERSONS UNABLE TO PAY THEREFOR AND COMMUNITY SERVICE BY ASSISTED HEALTH CARE FACILITIES

Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Proposed rules and notice of public hearing.

SUMMARY: This notice proposes rules establishing requirements for health care facilities assisted by the Department of Health, Education, and Welfare under titles VI and XVI of the Public Health Service Act to fulfill assurances, given in their applications for assistance, that they will provide a community health service and a reasonable volume of services to persons unable to pay. The Department has become increasingly concerned that the regulations as currently in effect do not adequately assure compliance with the law. Conflicting concerns have been expressed by health care facilities and consumer advocacy groups, and those concerns have, in a number of cases, become the subject of litigation.

DATES: Comments must be received on or before December 26, 1978. A public hearing will be held on the proposed rules on December 5 and 6, 1978.

ADDRESSES: Wirtten comments and requests to testify at the public hearing should be sent to William T. Berry, Acting Director, Bureau of Health Facilities Financing, Compliance, and Conversion, Room 6-50, Center Building No. 1, 3700 East-West Highway, Hyattsville, Md., 20782, Attention: Albert T. Billingslea. The public hearing will be held at the Department Auditorium, HEW North Building, 330 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

William T. Berry, Acting Director, Division of Facilities Compliance, Bureau of Health Facilities Financing, Compliance, and Conversion, Room 6-50, Center Building No. 1, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6893.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposes to issue regulations to implement the requirements of section 1602(6) of the Public Health Service Act (42 U.S.C. 300o—1(6)). That section requires the Secretary to prescribe:

> the general manner in which each entity which receives financial assistance under this title or has received financial assistance under this title or title VI shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

Subpart F below proposes requirements concerning the assurance that an assisted facility will provide a reasonable volume of services to persons unable to pay while subpart G proposes requirements concerning the assurance that an assisted facility will provide a community service.

The "uncompensated services" and "community service" requirements which currently apply to title VI-assisted facilities are set out at 42 CFR 53.111 and 53.113, respectively. The only regulations which have been issued to date relating to title XVI-assisted facilities (42 CFR part 124, subpart B) incorporate §§ 53.111 and 53.113 by reference.

Background and Summary of Current Rules

Section 605(b)(3) of the act provides that as a condition of obtaining assistance under title VI, an applicant must give assurance that—

> "(1) The facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint." Section 603(e), PHS Act.

These provisions, known as the "community service" and "uncompensated services" assurances, respectively, have been part of title VI in substantially this form since it was enacted in 1946.

A Uncompensated Services Regulations

Before 1972, the regulatory standard of compliance with the statutory requirement for a reasonable volume of services to persons unable to pay was extremely general. In 1972, the Department undertook to define more specific compliance standards for the uncompensated services assurance. The regulations codified at 42 CFR 53.111 were accordingly issued in substantially their present form. 37 FR 14721 (July 22, 1972). Principally, the regulations provided for the following: Administration of assurance compliance by the title VI State agency, which was to set eligibility criteria for persons unable to pay and conduct a monitoring and enforcement program; definition of the volume of uncompensated services provided by a facility to persons unable to pay as the difference between the total amount charged such persons and the reasonable cost (as determined by the application of medicare cost principles) of the services provided to them; the period of compliance limited to 20 years for grants, and to the time the loan remains unpaid for loans and loan guarantees; two annual presumptive compliance options (the lesser of 3 percent of operating costs or 10 percent of title VI assistance and the "open door" option); exclusion from computation of uncompensated services those services for which a collection action (other than the rendition of bills) had been initiated against the patient; and exclusion from computation of uncompensated services those services for which payment was or could be obtained from a third party payor.

Following their issuance, several provisions of the uncompensated services regulations were challenged in court. The validity of the 20-year limitation and the 3 percent to 10 percent presumptive compliance option was repeatedly upheld. *Cook* v. *Ochsner Foundation Hospital*, 559 F. 2d 968 (5 Cir. 1977); *Lugo* v. *Simon*, 426 F. Supp. 28 (N.D. Ohio 1976); *Corum* v. *Beth Israel Medical Foundation*, 373 F. Supp. 550 (S.D.N.Y. 1974). The only major change to the 1972 uncompensated service regulations was made in 1975, as a result of the decision in *Corum* v. *Beth Israel Medical Center, supra*. That decision invalidated the billing provision of the regulation. The court stated that persons unable to pay should not have to incur liabilities for services in the hope of qualifying for free or below cost services, nor should facilities be able to meet their uncompensated services obligation simply by charging off bad debts against the obligation. Rather, a determination of inability to pay prior to provision of services was required if the services were to be counted toward fulfillment of the uncompensated services obligation. The regulations were accordingly amended on October 6, 1975 (40 FR 46203), to require determinations prior to service except in certain circumstances (emergencies, change in circumstances, false or erroneous information given by the patient). At the same time, a requirement that facilities post notice of their uncompensated services obligations was also added to the regulations. See §§ 53.111(f) (1) and (i).

Title VI has not been funded since fiscal year 1974. Instead, in January 1975, Congress enacted title XVI to replace the program of assistance under

title VI. Pub. L. 93-641, sec. 4. Like title VI-assisted applicants, title XVI-assisted applicants are required to give a uncompensated services assurance. The title XVI assurance requirement, however, reads as follows:

"* * * [A]t all times after (the) application is approved * * * (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint." Section 1604(b)(1)(J), PHS Act.

There provisions of title XVI impact directly on facilities assisted under title VI: (1) Section 1602(6), set out above, which requires the Secretary to prescribe the general manner in which facilities aided under title VI shall be required to comply with the assurances, and the means by which compliance shall be demonstrated; (2) the next-to-last sentence of section 1602, which provides for periodic reporting on compliance by title VI and XVI-assisted facilities; and (3) section 1612(c), which provides that the Secretary shall periodically investigate and ascertain the compliance of title VI and XVI-assisted facilities with their assurances and take appropriate action to effect such compliance, including requesting the Attorney General to bring an action against the facility for specific performance of its assurance. Section 1612(c) also provides that any person may file a complaint with the Secretary charging noncompliance by a facility and, if the Secretary dismisses the complaint or the Attorney General has not brought an action against the facility within 6 months of when the complaint was filed, that person may bring an action against the facility to effect compliance.

As a result of the enactment of title XVI, there has been an increasingly heavy volume of administrative complaints filed under section 1612(c). Numerous investigations of facilities and decisions have been made by the Department. The revised regulations proposed by the Department in part reflect the knowledge acquired about the operation of the present assurances requirements as a result of those investigations.

B. COMMUNITY SERVICE REGULATIONS

As enacted in 1946, the title VI community service assurance provision read as follows:

"the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant, without discrimination on account of race, creed or color, but an exception shall be made in cases where separate hospital facilities are provided for separate population groups if the [State] plan makes equitable provision on the basis of need for facilities and services of like quality for each group." Section 622(f)(1); Pub. L. 79-725 (1946).

In 1963, the "separate but equal" portion of the statute was declared unconstitutional, *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4 Cir. 1963), cert. den. 376 U.S. 938 (1964). Subsequently, and after enactment of title VI of the Civil Rights Act, Congress amended the community service language in 1964 by deleting both the "separate but equal" and the nondiscrimination provisions, resulting in the present language of the assurance. Pub. L. 88-443.

Like the original uncompensated services regulations, the community service regulations adopted subsequent to the 1964 amendment were extremely general. However, in 1974 the Secretary issued the more specific compliance standards presently codified in § 53.113 in response to the order in *Cook* v. *Ochsner Foundation Hospital*, 61 F.R.D. 354 (E.D. La. 1972). 39 FR 31766 (Aug. 30, 1974). That order directed the Secretary to require title VI-assisted facilities to participate in the medicaid program and refrain from excluding persons because they are medicaid recipients. Consistent with the *Cook* holding, the regulations were revised to require assisted facilities to participate in medicare and most other third party payment programs in addition to medicaid. The regulations also provided for the following: Administration of assurance compliance by the title VI State agency, which was to conduct a monitoring and enforcement program; a requirement that services be made available to all persons residing in the facility's territorial area, except that availability could be limited on the basis of age, medical indigency, or type or kind of medical or mental disability; and limitation of the community service obligation to 20 years for grants and the time the loan remained unpaid for loans and loan guarantees.

The validity of the 20-year limitation on the community service assurances was successfully challenged in two suits. *Cook* v. *Ochsner Foundation Hospital*, Civil No. 70-1969 (E.D. La. 1975), and *Lugo* v. *Simon, supra*. Both courts found no statutory basis for a durational limitation of the assurance. Consequently, the regulation was amended to delete the durational limitation. 42 FR 16780 (Mar. 30, 1977).

It should be noted that the provisions of title XVI described above which apply to title VI-assisted facilities (i.e., the requirement to issue regulations, the reporting requirement, the requirement for periodic investigation and the provision for administrative complaints and a private right of action) cover the community service assurance as well as the reasonable volume assurance.

The community service assurance provision which applies to title XVI-assisted facilities reads as follows:

"* * * [A]t all times after (the title XVI) application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility * * *" Section 1604(b)(1)(J), PHS Act.

II. SUMMARY OF PROPOSED RULES AND MAJOR ISSUES

While the regulations set forth below continue many policies of the present rules, they propose a number of policy changes which in the Department's judgment will improve the effectiveness of the assurance program. The most significant policy changes are summarized below, along with an explanation of the major implications of those changes for beneficiaries of the assurances and the assisted facilities. Public comment on the probable impact of these regulations, as well as suggestions for alternative policies, are solicited and welcomed. Public comment on the administration of the current regulations and any problems requiring the Department's attention will also be helpful. Any empirical data or personal experiences or observations that can be cited in support of positions taken in the public comments would be particularly useful, as would discussions of particular problems that specific provisions of the proposed rules may raise for facilities under State or local law.

A. UNCOMPENSATED SERVICES REGULATIONS—PROPOSED SUBPART F

Subpart F proposes requirements for how facilities assisted under titles VI and XVI of the Public Health Service Act are to comply with the assurance, given as a condition of assistance under those titles, that they would provide a reasonable volume of services to persons unable to pay. The proposed regulations would replace 42 CFR 53.111 and, while they are similar in some respects to § 53.111, they also differ in many respects. Like § 53.111, the proposed rules attempt to accomplish several related purposes. They seek to assure that: (1) Facilities provide the required amount of uncompensated services, (2) those services are provided to the persons who should get them, and (3) those services are distributed in a fair manner. The proposed rules establish those requirements which the Secretary believes are necessary to effect these general purposes. The most significant aspects of the proposed regulations are discussed below.

1. *Duration of obligation.* The proposed regulations establish require-

ments for facilities assisted under title VI of the Act and for facilities assisted under title XVI of the Act. The requirements applicable to the two types of facilities are in general the same. However, it should be noted that the length of time the obligation under the assurance applies to a facility (see proposed § 124.501(b)) is different under the two programs. The durational limitation (20 years for grants, the time during which the loan remains unpaid for loans and loan guarantees) has been retained for title VI-assisted facilities. As noted above, this durational limitation has been repeatedly upheld by the courts and Congress did not amend it in enacting title XVI. There is no similar limitation for title XVI-assisted facilities, however, reflecting the requirement in section 1604(b)(1)(J) of the Act that both assurances must apply to those facilities "at all times after [the] application is approved."

2. *Federal administration.* Under 42 CFR 53.111, the uncompensated services assurance compliance program has been administered primarily by the State agencies designated under section 604(a) of the Act, with the Secretary's role in the process being relatively minor. Any State wishing to maintain a monitoring function consistent with nationally set standards established by the Secretary will be given the opportunity to do so, but the proposed regulations otherwise eliminate the role of the State agencies for both title VI and title XVI facilities, and place responsibility for administering the entire assurance compliance program squarely with the Secretary. This change reflects in part the congressional concern with the unevenness of enforcement of the assurance by the various State agencies (see S. Rep. No. 93-1285 at 61). In addition, the Secretary has concluded that direct administration of the entire assurances compliance program would generally promote the more efficient discharge of his new enforcement responsibilities under section 1612(c) of the Act. Moreover, since no funds are available under the statute for the administration of the assurances compliance program by the State agencies other than the funds available for all other administrative functions under titles XV (health planning) and XVI of the Act, the Secretary believes that not all States would devote sufficient resources to administering an assurance compliance program to insure adequate administration. This consideration likewise dictates Federal administration of the program. However, recognizing that some States may wish and be able to continue to assist the Secretary in administering the program, provision for an agreement between the Secretary and such States for this purpose is proposed. See proposed § 124.512.

This centralization of administration of the assurances compliance program explains certain changes in the program. The need to use the limited Federal resources most effectively and to assure consistent administration throughout the Department's 10 regions favors the choice of policy alternatives which minimize exceptions and the need for complex and individualized judgments and which simplify the processing of required information. This consideration thus in part explains the establishment of National, rather than State, standards of eligibility for uncompensated services (see proposed § 124.506), and the simplified procedure for setting a lower level of compliance (compare § 53.111(h) with proposed § 124.504).

3. *Eligibility criteria.* A major change in the assurances compliance program is the proposed adoption of Federal, rather than State, eligibility criteria. See proposed § 124.506(a). Under the current regulations, the States are required to set criteria in accordance with very general Federal guidelines. As a result, the actual eligibility criteria vary widely from State to State and may consider resources or high expenses in addition to gross income. The proposed criteria, by contrast, are uniform, and are based on the index used in numerous Department programs, the poverty income guidelines of the Community Services Administration.[1] Persons unable to pay are divided into two categories—those with incomes at or below the poverty income guidelines (category A) and those with incomes above the guidelines up to twice the guideline (category B). This two-tiered approach is consistent with the eligibility criteria in use in major health services programs of the Public Health Service. The criteria consider income only and do not consider resources.

While this approach may result in some inequities, it is felt that inclusion of resources in the consideration of eligibility would be both extremely difficult and expensive for facilities to administer and infeasible for the Secretary to monitor.

Proposed § 124.506(a) adds a new requirement related to the new eligibility criteria. Facilities are required to provide uncompensated services to category A persons without charge; uncompensated services to category B persons must be provided either without charge or in accordance with a schedule of charges reduced proportionally to income, at the option of the facility. This general approach is likewise consistent with the charging policies currently applicable in the health services programs referred to above.

Proposed § 124.506(b) sets forth two alternative methods for determining whether persons fall within category A or B. The facility must calculate annual income either by: (1) Multiplying the person's income for the previous three months by four, or (2) using the actual income for the preceding 12 months. The former method is proposed in order to allow facilities the option of providing uncompensated services to persons who have sustained severe but recent financial reverses, such as the recently unemployed. This option is proposed to help enable facilities to take account of community

[1] The current CSA poverty income levels are as follows:

COMMUNITY SERVICES ADMINISTRATION

POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

	Nonfarm family	Farm family
Size of family unit:		
1	$3,140	$2,690
2	4,163	3,550
3	5,180	4,410
4	6,200	5,270
5	7,220	6,130
6	8,240	6,990

For family units with more than 6 members add $1,020 for each additional member in a nonfarm family and $860 for each additional member in a farm family.

POVERTY GUIDELINES FOR ALASKA

	Nonfarm family	Farm family
Size of family unit:		
1	$3,940	$3,380
2	5,210	4,450
3	6,480	5,520
4	7,750	6,590
5	8,020	7,860
6	10,290	8,730

For family units with more than 6 members add $1,270 for each additional member in a nonfarm family and $1,070 for each additional member in a farm family.

POVERTY GUIDELINES FOR HAWAII

	Nonfarm family	Farm family
Size of family unit:		
1	$3,620	$3,130
2	4,790	4,110
3	5,960	5,090
4	7,130	6,070
5	8,300	7,050
6	9,470	8,030

For family units with more than 6 members add $1,170 for each additional member in a nonfarm family and $980 for each additional member in a farm family.

SOURCE: 43 FR 14316 (Apr. 5, 1978). It should be noted that the CSA Poverty Income Guidelines are periodically revised. Under these regulations such revisions would automatically be incorporated into the eligibility criteria.

need in areas where there have been sudden or severe changes in the local employment situation or other substantial economic problems. Facilities are encouraged to take community preferences into consideration in determining which method of calculation of income they will use. While the choice of method is left up to the facility, once made, it must be used for the entire fiscal year for all persons requesting uncompensated services during the year. This latter requirement is proposed to ensure that the eligibility criteria are applied in an equitable manner by the facility.

The Secretary solicits comments on the ramifications of the above policies. He is particularly interested in information concerning the impact of the proposed income standards from region to region of the country (i.e., if they will be very restrictive in some areas and very inclusive in others because of relative income levels). He welcomes suggestions for alternative criteria, and particularly explanations of why those alternatives are superior. If there will be difficulty in applying the income criteria or using the required methods of calculating income, he would appreciate specific examples of such problems along with suggestions for improvement. If the requirement for providing services to category A persons without charge and to category B persons without or at a reduced charge will create problems under State or local law, citation to and explanation of such laws would be extremely helpful. Comments are also solicited on the option provided to applicants to provide free, rather than reduced cost, services to individuals in category B. Should the Secretary require that category B patients be charged so that more care is available for persons who are needier? In any case, should the Secretary prescribe the schedule of charges required to be used for Category B patients when charges will be made, or should he continue to leave the establishment of the schedule to the facilities?

4. *Compliance level.* Under the present regulations, facilities are in presumptive compliance with their reasonable volume obligation if they: (1) Provide a dollar level of uncompensated services at least equal to the lesser of 3 percent of their operating costs or 10 percent of the title VI assistance received, or (2) certify that they will not deny admission to persons on the basis of inability to pay and provide uncompensated services to all persons admitted who meet the State criteria for "persons unable to pay". Section 53.111(d). The latter option is known as the "open door option."

Proposed § 124.503 retains the concept of percentage compliance options of the present regulations, since this approach has been repeatedly upheld by the courts as a reasonable interpretation of the statutory language. However, § 124.503 proposes several significant policy changes. First, the "open door option" is eliminated. Experience with the present regulations has shown that its requirements are ill-understood by facilities and that this lack of understanding has resulted in denial of uncompensated services to persons who should have received them. Moreover, determining compliance with the option is extremely difficult. However, provision has been made to accommodate the needs of those facilities for whom the "open door option" was principally designed, i.e., facilities which—because of the socio-economic characteristics of their service areas—do not have a demand for uncompensated services sufficient to enable them to meet the 3 percent—10 percent compliance levels. See proposed § 124.504, which sets out the method by which facilities can obtain a reduction of the required level of compliance in cases of insufficient demand for uncompensated services.

Second, the definition of "operating costs," the base on which the 3 percent option is calculated, has been clarified. The term "operating costs" now refers to the total operating expenses reported on the audited annual financial statement required under § 124.510. Thus, the base on which the "3 percent" option is calculated is a clearly identifiable sum certain, which will enable all parties concerned—the Secretary, facilities and beneficiaries—to know readily what the required dollar volume to be met is for a given fiscal year. It is the Secretary's understanding that this change in definition in fact accords with how the same term in the present regulations has generally been interpreted. For this reason, it should not require a significant change in practice by facilities.

However, comments would be helpful with respect to one problem which arises under the 3 percent option because of the requirement that the level of uncompensated services to be provided must be published 60 days prior to the close of the fiscal year. See § 124.505(a)(1). Thus, the 3 percent option for any fiscal year is required to be based on operating costs "for the preceding fiscal year," yet that preceding year will not have ended by the date on which the compliance level must be published. One solution would be to base the calculation of operating costs on the most recent year for which a financial statement is available. This would mean, however that the uncompensated services obligation would be based on costs which are as much as 2 years behind the provision of the services.

Another option would be to estimate the total operating costs for the preceding year by assuming that the costs for the final two months after publication of the required notice will be proportionate to the costs in the first ten months (or equal to one-fifth of those costs).

Third, the base on which the 10 percent option is calculated has been changed in two ways. The first change is the inclusion in the base of so-called "supplemental" Federal assistance received in connection with the assisted project. The rationale for this change is that since the assurance was given with respect to the project as a whole (of which Title VI funded part and assistance under the supplementary programs funded part), the "Federal assistance" base should be expanded to reflect that fact. The second change is a provision for adjusting the base on which the 10 percent option is calculated to take account of inflation. Under the current version of the 10 percent option, while the dollar amount of uncompensated services to be provided remains the same each year, the actual volume of those services declines with inflation in the cost of health care. This change remedies that inequity. The national Consumer Price Index (CPI) figure for medical care is proposed as the inflation factor to be applied. The national, rather than local, figure is proposed to facilitate administration, since the CPI is computed only for a limited number of geographic areas. The medical care component of the CPI is proposed as the one most reasonably reflective of changes in the cost of medical facility care. The inflation factor will be used to calculate the scope of the uncompensated services obligation under the 10 percent option only in fiscal years following the effective date of the revised regulations, and will not be applied retrospectively to take into account inflation which occurred in years prior to 1979.

Finally, the proposed regulation provides that any amount by which a facility fails to meet the required annual level of compliance will be added to the subsequent fiscal year's compliance level, subject to the procedures for obtaining lower compliance levels and extensions of the time in which to make up the deficit. This requirement would apply to fiscal years subsequent to the effective date of these regulations, and is included to make sure that facilities provide the services which they assured would be provided.

While doing so is not required under proposed § 124.503, the Secretary urges facilities which have met their quotas to refer persons unable to pay to other facilities which have not met their quotas.

There are several aspects of these proposed changes in policy on which the Secretary would particularly welcome comment. First, if there are valid reasons for retention of the open door option, what are they? Second, are there problems associated with including supplemental assistance in the base for calculation of the 10 percent option? Third, is the proposed method for adjusting the amount of Federal assistance to account for inflation equitable and workable? If alternatives are suggested, the Secretary would appreciate an explanation of how they would work in various areas of the country.

5. *Amounts to be credited.* The present regulations permit a facility to credit against its uncompensated services obligation no more than the amount by which the "reasonable cost" of services provided to a specific patient exceeds the amount actually charged the patient. "Reasonable cost" is to be determined under Medicare cost principles. Under Medicare cost principles, however, "reasonable cost" is not susceptible to computation on a current basis for specific patients. As a result, many facilities have simply aggregated their usual charges for services provided to beneficiaries of uncompensated services, and applied to that total the proportion of costs reimbursable under Medicare as a method of determining the total allowable uncompensated services provided. The Secretary believes that approach is generally satisfactory and wishes to avoid imposing unnecessary accounting burdens on facilities in order to determine compliance with their uncompensated services assurance. However, since there is a need to determine the amount to be credited against the quota for services to individual patients, the proposed regulations set forth a similar methodology for making that determination. See the definition of "allowable credit" in § 124.502.

It should be noted that, consistent with current regulations, the proposed regulations provide that the only amount which may be credited against the uncompensated services obligation is the allowable credit minus the amount actually charged the patient. Any amounts billed according to the schedule of charges established for Category B patients, to a patient determined to be eligible for reduced charge services which are not paid, may not be counted as uncompensated services. These amounts are bad debts and not uncompensated services.

6. *Lower level of compliance.* Proposed § 124.504 sets out a method for establishing a lower compliance level for facilities who request it. The basis for such a request may be that either (1) there is insufficient need in the facility's service area to permit it to meet the applicable compliance level under proposed § 124.503, or (2) the facility cannot afford to meet the applicable compliance level.

The proposed regulation provides that decisions on applications for lower compliance levels will be made by the Administrator of the Health Resources Administration and will not be further delegated by him without the Secretary's approval. The Secretary wishes to assure to the extent possible the uniform application of this exception to the compliance level, and therefore he intends to review the matter carefully before any further delegation will be authorized. Comments on the soundness of this administrative decision are requested.

Comments are also sought on whether the proposed criteria for granting a lower level should be made more specific. For example, should the requirement that a facility be unable to afford provision of uncompensated services at the required compliance level be defined as the likelihood of bankruptcy within some specific period (e.g., 2 years) if the level were met? Should factors for determining need in the facility's service area be spelled out, such as general income levels, medicaid or public assistance eligibility rates, or the availability of public or charity hospitals in the area? If more specific and additional criteria are suggested, a statement of why those criteria would be more appropriate than the ones proposed would be appreciated.

Comments are also sought on the proposed time frame and other requirements of the proposed procedure for obtaining a lower compliance level. Under the proposal, facilities must request a lower level of compliance for a year not less than 60 days before the close of the preceding fiscal year, and publish a notice of that request and notify the HSA. This period is intended to give the Secretary sufficient time to do a preliminary review of the request, and the public and the HSA sufficient time to begin preparation of any comments. An audited financial statement is required within 60 days of the close of the fiscal year. This period should give the facility enough time to obtain the audit while not unduly delaying a final determination. Public comments must be submitted within 150 days of the publication of the notice that a lower level is requested, which gives the public at least 30 days to review the audited financial statement. The Secretary's decision will be made no later than 60 days following receipt of the audited financial statement. This period of time is intended to assure a relatively prompt decision, while affording the public an adequate opportunity to comment. It should be noted that during the period in which a request for a lower level of compliance is pending, the applicant will be required to provide uncompensated services at the annual compliance level, not at the lower level requested. The applicant may then adjust the amount of uncompensated services to be provided throughout the remainder of the year if, following the Secretary's decision, the applicant is permitted to meet a level of compliance lower than the annual compliance level.

7. *Allocation of uncompensated services.* Proposed § 124.507 would require facilities to allocate their uncompensated services among persons unable to pay either on a first-come, first-served basis until the quota for the quarter is exhausted or in accordance with another plan of its own choosing. The option to use its own plan is available only if the facility publishes the plan, notifies and provides opportunity to comment to the local health systems agency, and if the plan itself provides for (1) some distribution of uncompensated services throughout the year, (2) some services to category A persons, and (3) provision of uncompensated services to any person who falls within the plan who requests them.

The present regulations contain no such requirement, and this laissez-faire approach has resulted in allegations of discrimination. Further, various groups have suggested that the Secretary require very specific types of allocation, such as requiring a facility to provide its uncompensated services equally among outpatient, inpatient and emergency services; to provide a specific dollar volume of inpatient services; to limit the services provided to those for which total cost is below a fixed dollar amount, such as $3,000; or to limit services to those involving catastrophic loss. Some of these suggestions have been based on the practice of some facilities of providing most or all of their free care on an outpatient or emergency basis, thus depriving financially eligible individuals of the opportunity to receive quality inpatient care. Others are based on a desire to have the limited amount of uncompensated services distributed to those most in need, or to as many persons as possible.

The Secretary has decided not to propose an inflexible allocation requirement, however, because any one allocation scheme may not be the most appropriate for all facilities and communities and administering compliance with it would be infeasible. However, the Secretary has concluded that requiring some method of allocation is necessary to prevent arbitrariness or discrimination in the distribution of uncompensated services, and to promote (but not require) planning for

community health needs. Thus, the alternatives proposed satisfy the need to assure some objective method of allocation, while giving facilities sufficient flexibility to take account of local and their own institutional needs.

It should be emphasized that the Secretary is *not* dictating how facilities allocate their uncompensated services. Rather, facilities are free, under § 124.507, to adopt their own plans as long as they meet the procedural and minimal substantive requirements of that section. All he is doing is requiring that they adopt a plan (which many facilities undoubtedly already do) or use the first-come, first-served alternative of § 124.507(b). Facilities which adopt their own plans are encouraged to cooperate with other facilities in their service area in devising their allocation plans, in order to best meet community needs. The local HSA can be helpful to the applicant in identifying community needs, and therefore the Secretary proposes to require facilities which adopt their own plans to give the HSA a chance to comment on the proposed allocation scheme. However, under either alternative, if a facility improperly denies a person uncompensated services who would have come within the allocation scheme, the facility must provide that person uncompensated services in order to be in compliance with its assurance, regardless of whether it has met its quota in the interim.

If these requirements will raise particular practical problems or problems under State or local law for facilities, the Secretary is interested in being so informed. Suggestions as to alternative approaches that might be workable or improvements of the above are also solicited.

8. *Notice requirements.* The proposed rules carry forward the existing notice requirements of the present regulations without substantial change. Compare §§ 53.111(h)(4) and (i) with proposed §§ 124.505(a) and (b), respectively. However, the standards for compliance with the posted notice provision have been clarified in these regulations by three additions. First, the proposed rules would require that the heading of the posted notice be legible to a person of normal vision from a distance of 15 feet. The present regulations contain no such explicit requirement, and site investigations have turned up cases where the notice is posted so as to be virtually unnoticeable (e.g., behind a door, on a 3"x5" card in small type). The proposed rule thus seeks to prevent such practices. Second, the term "multilingual" as applied to the community served by a facility has been defined, using the definition presently being applied in the Department's health planning programs. Third, if a facility has met is quota for the applicable time period, it would be required to post a notice to that effect; under the present regulations, such notice is optional.

One major change has been made in the overall structure of the notice requirements. Proposed § 124.505(c) requires facilities to give individual written notice of the availability of uncompensated services to each person seeking services. The notice must, among other things, state the eligibility and allocation criteria being applied and state that determination of whether the person will receive uncompensated services will be made promptly on request. This notice must be provided before service except in emergency cases. The new notice requirement is proposed as part of the general change in approach ot the prior determination requirement, summarized in the next section, and because experience has shown that posted notice alone is inadequate as the main vehicle for informing persons under stress, as those seeking medical care usually are. This requirement is also consistent with the recent decision in *Newsom* v. *Professional Adjustment Services*, 453 F. Supp. 401 (M.D. Tenn. 1978). Whether or not individual written notice must be required as suggested by the *Newsom* court, the Secretary believes that such a requirement will promote the proper administration of the statute.

The Secretary solicits suggestions for improving the proposed requirements. Specifically, is there other information which the individual written notice should contain? Should additional requirements be imposed for conveying the content of the individual written notice to persons who are illiterate or are no such additional requirements necessary? Is the definition of "multilingual" feasible to administer or are improvements needed? Although the Secretary believes that the requirement of providing individual written notice can readily be accommodated within the present admissions process of most facilities, he solicits comment on this question. Comments on the need for requiring posted notice of the availability of uncompensated services if individual notice is required are also solicited.

9. *Eligibility determination requirement.* Among the most significant changes proposed are the policies set forth in proposed § 124.508. That section is designed to replace the requirements presently set out at § 53.111(f)(1). The prior determination requirements of that section have been changed substantially, as discussed below.

As noted in section IA above, § 53.111(f)(1) was adopted to comply with the decision in *Corum* v. *Beth Israel Medical Center, supra.* Consistent with the *Corum* decision, that section requires facilities to make a determination of eligibility for uncompensated services prior to the provision of service unless one of the exceptions (emergency, change of circumstances, erroneous or incomplete information provided by the patient) applies. Site investigations over the past year suggest that this provision is not well understood by facilities. Monitoring compliance with it has also proved to be extremely difficult, since it is often hard to tell whether individual cases fall within the general rule or one of the exceptions, and documentation of the determinations made is frequently incomplete.

Thus, the Secretary has chosen another approach to satisfy the principles enunciated in *Corum.* Under the proposed rule, the determination of eligibility must be made promptly on request. See proposed § 124.508(a)(2). Since persons seeking services will be given individual notice as soon as they seek those services that uncompensated services are available and that they can get a prompt determination of their eligibility for uncompensated services (proposed § 124.506(c)), these provisions together will assure that anyone who intends to rely on the eligibility determination in incurring medical expenses will be able to get it before he or she incurs those expenses. Hence, the requirement is consistent with *Corum* while at the same time avoiding one of the more mechanistic results of the present requirement. Under the present regulations facilities which begin to provide services while processing paperwork for the determination are penalized even when a determination prior to service has not been requested, and perhaps is not even desired by the patient. In such a case, under the proposed rules, the determination must be made promptly, but not necessarily prior to service.

The elimination of the strict requirement of the current regulation that determinations of eligibility must be made prior to the provision of services does not authorize facilities to satisfy their uncompensated services obligation simply by charging off bad debts against it. Credit against the obligation is available only if the services are provided to persons who qualify under the eligibility criteria and allocation plan and if all other requirements of the subpart are met. Thus bad debts of persons who do not qualify under the eligibility criteria and allocation plan cannot be used to satisfy the obligation. The provision recognizes, however, that persons who do qualify for uncompensated services may not apply for them before services are provided. It thus gives the facilities sufficient flexibility to take this into account

and gives those persons the chance to get a determination whenever they decide to apply. It should be stressed, though, that the determination must be made promptly whenever it is requested.

The rules also propose documentation requirements for the first time, to remedy the monitoring problems experienced under the present regulations. See proposed § 124.508(a)(1) (i) and (ii). In addition, they require that persons who request and are denied uncompensated services be given a written statement of why those services were denied. See proposed § 124.508(b). This latter requirement will, among other things, help assure that the eligibility and allocation criteria are being properly applied, since persons will have those criteria available to compare with the reasons for denial (see proposed § 124.505(c)(1)(ii)).

Proposed § 124.508(c) makes explicit what is implicit in § 53.111(f)(1), that facilities may verify eligibility information provided by the person seeking services. While facilities may choose to accept the information provided by the patient at face value, they are not required to do so. Requiring such verification is not proposed because the cost and difficulty involved may be unduly burdensome for some facilities (e.g., public health centers). However, the Secretary believes that it is completely consistent with the purpose of these regulations for facilities to seek to verify such information, so that the uncompensated services go only to those who are in fact eligible for them. However, it should be noted that facilities cannot use verification as a means of avoiding the "prompt determination" requirements of § 124.508(a)(2). Thus, these provisions together may mean that facilities will have to make prompt determinations which are conditioned on later verification. Under such an arrangement, where the determination was made that a person would get uncompensated services, that determination would remain unchanged, if the person provided accurate information. If he did not provide accurate information, the determination could be reversed.

The Secretary particularly solicits comment on the practical ramifications of the above proposals. The Secretary's objective is to assure that persons eligible for free care know that such care is available and obtain a timely determination of their eligibility by the facility. However, the Secretary wishes to accomplish this objective in the least burdensome manner for facilities. If the individual notice/determination requirements will on balance be more burdensome than the present posted notice/prior determination requirements, he would like such information. If improvements can be made to the process, particularly if there are better and less burdensome ways of assuring individual notice, they should be suggested. Estimates of the cost of the proposed system relative to the present system are also solicited. If verification procedures are likely to create problems for beneficiaries, he would appreciate being so advised.

10. *Reporting requirements.* The reporting requirements which apply to assisted facilities are set out at proposed § 124.510. The Secretary intends to minimize the paperwork burden on facilities by developing an assurance reporting form which would include the information need to review performance, rather than requiring facility's to submit financial statements and other data to the Secretary on a routine basis.[2] However, the underlizing statements and other data documents must be returned by the facility for 5 years to permit an investigation if analysis of the reporting forms, or complaints, suggests the needed for further review.

Proposed § 124.510(a)(2) also gives the Secretary general authority to request additional information relating to compliance. The section is purposely left general so as to enable the Secretary to request additional information from facilities where there appear to be significant compliance problems, while not requiring him to burden those facilities which do not appear to have significant compliance problems with such additional reporting.

II. *Investigations.* Proposed § 124.511(a)(1)(i) sets out a general provision for investigation, implementing the Secretary's new statutory authority under section 1612(c) of the Act (discussed in section IA above) periodically to investigate the compliance of assisted facilities. At present, the Secretary hopes to be able to implement this general authority by reviewing each year the annual submission of the facilities, discussed in the preceding paragraph, to ascertain compliance. Based on these reviews, complaints filed, and other information called to the Secretary's attention, it is the Secretary's intention to conduct in-depth investigations of those facilities which appear most likely to be out of compliance.

Proposed § 124.509(a)(1)(ii) spells out certain requirements for filing complaints of noncompliance with the Secretary under section 1612(c) of the Act. The purpose of the new requirements is to assure that the information necessary to investigate complaints is provided to the Secretary, in view of both the statutory 6-month period during which administrative enforcement takes precedence over private litigation, and the fact that the Department will be handling many complaints presently handled entirely by the State agencies as well as carrying out the periodic investigations described in the preceding paragraph. The Secretary does not intend by these requirements to erect barriers to the making of complaints, and Department officials will do their best to assure that incomplete complaints are completed as expeditiously as possible. The Secretary solicits comment on whether the proposed requirements will unduly burden beneficiaries and what, if any, improvements could be made.

One possible approach to resolving allegations of non-compliance with the uncompensated services or community service assurances would be to establish a procedure for third party mediation of disputes and fact-finding where mediation fails. A mediation/fact-finding process might facilitate a prompt resolution of complaints without the need for administrative or judicial adjudication and could free limited Department resources to concentrate on the most severe patterns of non-compliance. The Secretary would like comments on the efficacy of a mediation/fact-finding procedure and suggestions for a frame work for such a procedure. Questions that need to be explored include: should mediation be a voluntary procedure available to individuals denied service or should it be a prerequisite to the filing of a complaint under section 1612(c) of the Act?; should all facilities be required to establish a mediation or similar grievance procedure, or can a method be established to target such a requirement only on those facilities likely to have a substantial number of complaints filed against them?; should the Department establish a core of federally-trained mediators?; what costs may be involved, and to what extent can volunteers or salaried resources be authorized to reduce costs (e.g., community dispute centers, the local Bar Association, the Federal Mediation and Conciliation Service or similar State services might supply trained mediators without cost)?; and would a mediation process speed up resolution of disputes?

Finally, proposed § 124.511(a)(3) draws attention to the statutory provision of a private right of action to obtain compliance for persons who have filed a complaint with the Secretary under section 1612(c) of the Act.

[2] A copy of the most recent draft of a proposed reporting form, which has been widely circulated among the provider and legal services communities, is available from the Acting Director, Division of Facilities Compliance, at the address given above. It should be noted that the most recent draft will, of course, be changed to reflect any changes in policies adopted. Comments on the type of information which should be included on the form would be helpful.

Under this section, private individuals may bring an action to effectuate compliance with the uncompensated services or community service assurances only after the complaint has been dismissed by the Secretary or the Attorney General has not brought an action for compliance within 6 months. It is likely that limited Department resources will mean that many complaints will not be finally resolved within 6 months. Further, even when a departmental recommendation to the Attorney General can be completed in that period of time it will be extremely difficult for the civil action to be commenced in so short a timeframe. Therefore, the Secretary is considering the possibility of establishing a procedure under which complaints would be dismissed on the request of a complainant whenever the Secretary determines that he cannot resolve the complaint within the 6-month period. Once the complaint is dismissed a judicial action would be authorized. This procedure would free complainants to pursue judicial remedies where they believe that delay is causing them harm, while at the same time preserving for the Department the right to make an administrative decision where that is possible within the statutory period. Moreover, this procedure would maintain the right of those complainants who are willing to wait for an administrative decision, or who are unable to retain counsel to bring a court action, to obtain a decision from the Secretary. Comments would be helpful if they were directed to the desirability of such a procedure and to how the procedure might be designed.

12. *Enforcement.* Proposed § 124.511(b)(2) provides a major departure from the present requirements. The present regulations make no provision for application of a sanction by the Secretary against facilities found to be out of compliance, although there is provision for sanctions to be applied by the State agencies. However, this section provides that if the Secretary finds that a facility has not met its uncompensated services obligation for any year he will require it to make up that deficit whether or not the 20-year durational limitation on the uncompensated services obligation for Title VI assisted facilities otherwise would have expired. This remedial action is consistent with the requirement of § 124.503(b) that facilities make up any deficit discovered in their fulfillment of the required annual level of compliance. The provision does not impose any new burden on facilities. Rather, the Secretary is simply insisting that facilities in fact provide the volume of uncompensated services which they assured will be provided.

The Secretary believes that the deficit makeup requirement, which eliminates any advantage to a facility which does not meet its uncompensated services obligation, is a remedy which will be a deterrence to noncompliance. However, there might be other remedies which would be equally or more effective in deterring noncompliance, and he requests suggestions along this line.

The Secretary is concerned, as was the Congress, about allegations of substantial noncompliance with the uncompensated services assurance in past years. He has explored the possibility of including in the regulations a provision for adding to the required compliance level in future years amounts by which facilities have in the past failed to comply with their obligations. Any such deficit makeup requirement would necessarily be limited to fiscal years after 1971 because prior to 1972 no dollar volume requirements existed. See *Newsom, supra.*

The Secretary considered the possibility of applying makeup requirements retrospectively to years after 1971. The problem of establishing a uniform and equitable procedure for enforcing such requirements, however, were found to be severe. The Secretary was unable to design satisfactory resolutions of those problems. First, it appears not to be feasible to apply the requirement to facilities which elected the open door option. Under the open door option, facilities are not required to provide a specific dollar volume of uncompensated services. Hence, by definition, no dollar "deficit" can be calculated. While it could be argued that those facilities should be held to either the "3 percent" or "10 percent" level for those years, this option likewise does not appear viable. It would retroactively impose a requirement that does not presently exist and which some open door facilities could not have met (i.e., where there is not enough need for uncompensated services in the facility's service area to meet either the "3 percent" or "10 percent" level).

Second, the Secretary is concerned that many facilities may not have adequate records which would demonstrate compliance even if, in fact, the facility did comply with its assurance. Moreover, some States failed to develop specific criteria for eligibility for uncompensated services. Thus, even where records were maintained by facilities, there may be no clear test of eligibility against which compliance may be measured.

Third, noncompliance on the part of many facilities may have been the result of procedural violations (e.g., the prior written determination rule) whereas, in fact, the facility may have provided the appropriate dollar volume of uncompensated services to eligible individuals. In such a case, there would be no "deficit" for the facility to make up.

The Secretary, however, will consider proposals which might overcome the problems outlined above. It should be noted, however, that the Secretary feels that departmental resources can be most usefully concentrated on prospective compliance. Diversion of any substantial portion of those resources to deal with problems of past noncompliance which are fraught with legal and administration difficulties would, in the Secretary's view, detract from the main thrust of the enforcement effort and may therefore be counterproductive.

It should be emphasized that the Secretary's decision not to include a deficit makeup requirement for past noncompliance is not intended to compromise the rights of individuals who have been improperly denied uncompensated services. Those persons are, and will continue to be, free to pursue the legal remedies available to them.

13. *Nondiscrimination.* Finally, it should be noted that the nondiscrimination requirements of the community service regulations of course apply to the provision of uncompensated services. The community service requirements are discussed in section B, immediately following. In addition, a denial of uncompensated services on the basis of race, national origin, creed, or other ground unrelated to eligibility for services under the income criteria and allocation plan would violate the requirements pertaining to allocation of services in § 124.507.

B. COMMUNITY SERVICE REGULATIONS—PROPOSED SUBPART G

Subpart G proposes requirements for how facilities assisted under Titles VI and XVI of the Act are to comply with their community service assurances. The proposed regulations would replace 42 CFR 53.113.

The proposed community service regulations—like the proposed uncompensated services regulations discussed above—propose a changeover from State to Federal administration of the assurance program for the reasons discussed in section IIA2 above. The proposed reporting, investigation and enforcement provisions are substantially the same as those in proposed Subpart F. Hence, the considerations discussed in sections IIA10, 11, and 12 above likewise generally apply to proposed §§ 124.604 and 124.605 below.

1. *Duration of Obligation.* Like the present § 53.113(a), these rules make clear that there is no time limit to the community service obligation for either Title VI-assisted facilities or Title XVI-assisted facilities. See pro-

posed § 124.601. For Title VI facilities, this rule is consistent with the way the *Cook* and *Lugo* courts have read the statute. See the discussion at section IB above. For Title XVI facilities, this rule is consistent with the "at all times" language of section 1604(b)(1)(J) of the Act.

2. *Nondiscrimination.* The main requirements for compliance with the community service obligation are set out in proposed § 124.603. Proposed § 124.603(b), which sets out the requirement for providing services to beneficiaries of governmental programs, is substantially the same as § 53.113(d)(2). Like the latter section, proposed § 124.603(b) follows the holdings in *Cook* and *Lugo, supra,* that discrimination against such beneficiaries is inherently inconsistent with the community service assurance. See the discussion at section IB above.

The language of proposed § 124.603(a) differs in many respects from the analogous provisions of the present regulations, § 53.113(d)(1). Some of the changes are proposed for purposes of clarity or to make explicit what is implicit in the present regulation. Under the present regulations, a facility can limit the available of its services only by age, medical indigency, or type of medical or mental disability (§ 53.113(d)(1)(ii)). Under the proposed regulations, essentially the same limitations on availability are permissible: Subject to the requirements of Subpart F for the provision of a reasonable volume of services to persons unable to pay for the services, a facility is not otherwise required to provide services to the medically indigent, and it is not required to make available a service not available in the facility. Thus, facilities which serve particular age groups (e.g., children's hospitals, geriatric facilities) or only special types of disabilities (e.g., mental facilities, eye-ear-nose clinics, orthopedic facilities) are not required by these regulations to become full-service hospitals.

Further, § 124.603(a) explicitly states that a facility may not discriminate in the provision of its services on the basis of race, creed, color, or national origin. This requirement was implicit in § 53.113(d)(1). As discussed in section IB above, similar nondiscrimination provisions were part of the statutory community service assurance language as originally enacted and were only removed (apparently as redundant) after the "separate but equal" provisions of the assurance were declared unconstitutional in 1963. The Department has determined that it ought to make explicit what has been implicit in the statute, so that neither facilities nor beneficiaries are unclear as to the scope of the obligation. As indicated in the next section, complaints of discrimination under Titles VI and XVI which also raise a question of compliance with other acts (such as the Civil Rights Act of 1964) will be investigated under those other acts.

Further explanation is needed, however, of the requirement that a facility may not discriminate on "any * * * ground unrelated to an individual's need for the service or the availability of the needed service in the facility". The regulations specifically provide that an applicant will be considered to be out of compliance with this requirement if it adopts an admissions policy which would have the effect of excluding persons on a ground other than need for the service or availability of the service. The Secretary is concerned, as a result of numerous complaints and charges by poor persons and minorities and their representatives, that some medical facility admissions policies (such as pre-admission deposit requirements and admission only through physicians with staff privileges) have served to limit access to those facilities by persons in need of their services and particularly by beneficiaries under governmental programs such as Medicaid. Thus, persons who do not have a family doctor who can arrange for hospital admission may be excluded despite their ability to pay or eligibility for free care. Similarly, a policy of admitting only patients referred by physicians with staff privileges has the effect of excluding Medicaid recipients, despite their source of payment and the facility's status as a Medicaid provider, if none of the physicians with staff privileges will accept Medicaid patients. The Secretary wishes to make clear that any such policy which has the effect of excluding persons from admission to a facility on grounds unrelated to the need for or availability of services will be considered a violation of the facility's community service assurance. The Secretary does not, however, purpose to prescribe specific admissions policies. There are different alternatives available to each facility, and so long as persons in the facility's area who are able to pay or eligible for uncompensated services are not excluded the facility is free to use any policies it finds appropriate. It is emphasized once again, however, that a facility which has met its uncompensated services obligations may deny services to persons who are unable to pay for them.

The Secretary is particularly concerned that the widespread requirement of substantial preadmission deposits may operate to exclude persons who would be able to pay or who would otherwise qualify for uncompensated services, simply because they are not able to come up with the necessary cash at the time of their need for admission. He is thus considering a specific prohibition of preadmission deposits, either under the community service assurance or the uncompensated services assurance, or both. The Secretary solicits comments on the practical ramifications of such a ban and on whether there are other solutions than those proposed to the problems of exclusionary practices outlined above.

The proposed rules do not define the term "area served" or "service area". However, it is recognized that some definition of the term is most likely necessary, since the community service obligation only applies within a facility's service area. The Secretary solicits comments on whether the regulations should define the term and, if so, how they should define it. One approach he is considering is using the facility service areas set out in the Title VI State plan or, after it is approved, the Title XVI State medical facilities plan. He requests suggestions on any problems this approach might have as well as other approaches to defining the term.

3. *Investigations and enforcement.* As noted above, the proposed procedures for investigations and filing of complaints with respect to the community service regulations are substantially similar to those of the proposed reasonable volume regulations. However, it is the Secretary's intention to delegate the job of investigating complaints of discrimination under the community services requirements to the Office for Civil Rights, since the Office has the trained staff experienced in such investigations. Where questions of compliance with Title VI of the Civil Rights Act, the Age Discrimination Act, or section 504 of the Rehabilitation Act of 1973 arise out of those investigations, the enforcement procedures and sanctions of those statutes will be applied. Where those investigaations demonstrate discrimination not covered by the Civil Rights Act, the Age Discrimination Act, or section 504, the Public Health Service will proceed under its authority. The Secretary solicits suggestions of other, more effective sanctions which he might adopt.

4. *Reporting requirements.* Reporting requirements which apply to assisted facilities are set out at proposed § 124.604. The Secretary intends to minimize the paperwork burden on facilities by developing one reporting form through which the Department may monitor compliance with both the community service and uncompensated services assurances. At a minimum, the Secretary will need to collect sufficient information to allow him to determine whether there are patterns or practices of discrimination against public program beneficiaries

or against any other class of persons for non-medically related reasons. Some types of information which the Secretary is considering collecting include admissions or discharge data by race, and data indicating source of payment by patients. Suggestions for the least burdensome, most useful information which the Secretary should require to be reported to enable him to monitor compliance with the community service assurance are encouraged.

III. Regulatory Objectives and Strategy

The basic objective of these proposed regulations is to assure that the uncompensated and community services required by law are provided by facilities within the context of sound planning and management for the delivery of health care services. In preparing the proposed regulations, the Department took account of the dissatisfaction expressed by Congress and others with the way the uncompensated services and community service assurances have been implemented and monitored to date. After reviewing the situation carefully, the Secretary has determined that significant changes in administration such as those described above are needed to assure full compliance with the statutory requirements. However, in proposing these changes the Secretary has sought to hold to a minimum the administrative burdens imposed on facilities, in keeping with the President's policy of imposing on recipients of Federal funds only those burdens necessary for proper and efficient program implementation, and with the Secretary's Operation Common Sense Program.

For example, while the Secretary believes that some plan for the allocation of uncompensated services is needed to promote a fair and objective distribution of those services, he wished to provide facilities with maximum flexibility to devise their own plans. For this reason the regulations allow a facility either to adopt a service allocation plan providing all services on a first-come-first-served basis, allocated quarterly, or to adopt any other plan meeting minimal Federal standards which is believed appropriate under the particular local circumstances.

Furthermore, the regulations seek to encourage—but not mandate—the inclusion of uncompensated services as part of a comprehensive and integrated health planning process. For this reason the regulations require that the facility notify the local HSA of its proposed service allocation plan but do not require the HSA to take any specific action with respect to that plan. Local consumer's participation is likewise encouraged—but not mandated—through publication of the facility's proposed plan and notification of the HSA. To the extent that local officials, health care providers and consumers wish to develop a rational program for the distribution of the total amount of uncompensated services available to a community, these regulations seek to be supportive and not restrictive.

These regulations also seek to allow public officials, providers and consumers at the local level maximum flexibility to fashion their own approach which they believe is most appropriate to their needs, resources and circumstances consistent with broad national principles and Congressional mandates.

Finally, the regulations seek to assure compliance with the requirements of the law that the uncompensated and community services actually be delivered. For this reason patients seeking services must be individually notified of the availability of uncompensated services; annual reports of facility performance are required; unused, uncompensated services in 1 year must be carried over to the next year, and compliance investigations and field visits will be conducted by departmental officials.

As an aid to the fair, prompt and efficient settlement of disputes arising under these regulations, the Department is considering a mediation settlement process consistent with the requirements of the law. The disputes settlement process would not supplant the complaint and enforcement procedures but would seek to use the 180-day waiting period to resolve as many complaints as possible, making further adversarial procedures and litigation unnecessary.

Public comments are sought by the Department on the regulatory objectives and procedures as described above. How can the proposed procedures be improved to achieve the twin objectives of compliance and local discretion and flexibility? Would a mediation dispute settlement procedure aid in the achievement of compliance with these regulations?

IV. Procedures for Public Hearing

Because of the importance of the rules proposed below, the Secretary has decided to hold a hearing at which members of the public may testify on them. The hearing will be held on Tuesday, December 5, and Wednesday, December 6, at the Department auditorium, HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201. The hearing will be held from 9 a.m. to 5 p.m. each day, with a 1-hour break in the middle of each day. Speakers will be allotted a maximum of 10 minutes to testify.

Persons or groups wishing to testify at the public hearing should make such request by writing to:

Mr. William T. Berry, Acting Director, Bureau of Health Facilities Financing, Compliance, and Conversion, Room 6-50 Center Bldg. No. 1, 3700 East-West Highway, Hyattsville, Md. 20782, Attention: Mr. Albert T. Billingslea.

The Department will notify persons and groups seeking to testify of the date and time they have been allotted. If the demand for time to testify exceeds the time available, the Department will make every effort to make a reasonable allocation of time available among the various points of view, and persons who are not allotted time will be so informed. Persons who testify are encouraged to submit written remarks for consideration along with their testimony. If time remains at the end of either scheduled day persons in the audience who have been allotted time will be given an opportunity to testify.

Note: The Assistant Secretary for Health has determined that a regulatory analysis as required by Executive Order No. 12044 is not required for these proposed regulations.

In consideration of the above, it is proposed to add new Subparts F and G to 42 CFR Part 124, to read as set forth below.

Dated: October 19, 1978.

Julius B. Richmond,
Assistant Secretary for Health.

Approved: October 20, 1978.

Hale Champion,
Acting Secretary.

1. A new Subpart F is added to 42 Code of Federal Regulations, Part 124, to read as follows:

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay

Sec.

124.501 Applicability.
124.502 Definitions.
124.503 Compliance level.
124.504 Lower level of compliance.
124.505 Notice of availability of uncompensated services.
124.506 Eligibility criteria for identifying persons unable to pay.
124.507 Allocation of services.
124.508 Determinations of eligibility.
124.509 Exclusions from uncompensated services.
124.510 Reporting requirements.
124.511 Investigation and enforcement.
124.512 Agreements with State Agencies.

Authority.—Secs. 215, 1525, 1602(6), Public Health Service Act as amended; 58 Stat. 690, 88 Stat. 2249, 88 Stat. 2259; (42 U.S.C. 216, 300m-4, 3000-1(6)).

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay

§ 124.501 Applicability.

(a) The provisions of this subpart apply to every applicant who has given an assurance that it will make available in the facility or portion thereof constructed, modernized or converted with Federal assistance under Title VI of the Public Health Service Act (42 U.S.C. 291 *et seq.*) or Title XVI of the Public Health Service Act (42 U.S.C. 300o *et seq.*) a reasonable volume of services to persons unable to pay therefor.

(b) The provisions of this subpart apply to applicants for the following periods:

(1) *Applicants assisted under Title VI of the Act.* The provisions of this subpart apply to applicants under Title VI of the Act for whichever of the following periods is applicable:

(i) Twenty years after the completion of construction, as determined by the Secretary in the case of a facility for which grant assistance under section 606 of the Act was paid. For purposes of this subsection, "completion of construction" means the date on which the Secretary determines the facility was opened for service, if available; if the opening date is not available, it means the date on which the final part of the applicant's application for assistance under Title VI of the Act was approved, if available; if the date of final approval is not available, it means whatever date the Secretary determines most reasonably approximates the date of final approval.

(ii) The period during which any amount of a direct loan under section 610 or section 623 of the Act or any amount of a loan with respect to which a guarantee and interest subsidy has been provided under section 623 of the Act remains unpaid in the case of a facility for which such a loan was made.

(2) *Applicants assisted under title XVI of the Act.* The provisions of this subpart apply to applicants under title XVI of the Act at all times following the Secretary's approval of the applicant's application for assistance under title XVI, except that if the facility does not at the time of such approval provide health services, the assurance applies at all times following the facility's initial proyision of health services to patients, as determined by the Secretary.

§ 124.502 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act, as amended.

"Allowable credit" for services provided to a specific patient means the facility's usual charge for those services, or the usual charge multiplied by the percentage which the total allowable cost determined for the facility's most recent fiscal year under Title XVIII of the Social Security Act (42 U.S.C. 1395) and Subpart D of the regulations thereunder (42 CFR 405.401 *et seq.*) bears to the facility's total patient revenues for the year, which is less.

"Applicant" means an applicant for and recipient of a grant, a direct loan, or a loan guarantee under Title VI or Title XVI of the Act.

"Complaint" means a written statement by or on behalf of a person claiming to be a person unable to pay, submitted to the Secretary in the form and manner and containing the information required under § 124.510 (a)(1)(ii).

"Federal assistance", for purposes of § 124.503, means assistance received by the applicant under Title VI or Title XVI of the Act and any assistance supplementary to that Title VI or Title XVI assistance received by the applicant under any of the following acts: The District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90-457); the Public Works Acceleration Act of 1962 (42 U.S.C. 2641, *et seq.*); the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, *et seq.*); the Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.); the Local Public Works Capital Development and Investment Act of 1976 (Pub. L. 94-369). In the case of a loan guarantee with interest subsidy or a direct loan sold and guaranteed by the Secretary with an interest subsidy, the amount of Federal assistance under title VI or Title XVI, as applicable, shall be the total amount of the interest subsidy which the Secretary is, or will be, obligated to pay over the full life of the loan, as well as any other payments which the Secretary makes on behalf of the applicant in connection with the loan guarantee or the direct loan which has been sold.

"Fiscal year" means the applicant's fiscal year.

"Health Systems Agency" or "HSA" means an agency designated by the Secretary under section 1515 of the Act.

"Operating costs" for any fiscal year means the total operating expenses of a facility as set forth in the audited financial statement required by § 124.510(a)(1), minus the amount of reimbursement, if any, received (or if not received, claimed) under Titles XVIII and XIX of the Social Security Act.

"Persons unable to pay" means persons who meet the income criteria set out in § 124.506 of this subpart.

"Secretary" means the Secretary of Health, Education, and Welfare or any officer or employee of the Department of Health, Education, and Welfare to whom the authority concerned has been delegated.

"State agency" means the agency of a State designated by the Secretary as the State health planning and development agency under section 1521 of the Act.

"Uncompensated services" means services which are made available to persons unable to pay for them without charge or at a charge which is less than the allowable credit for such services. The amount of uncompensated services provided in a fiscal year is the total allowable credit for the services less the amount actually charged such persons for the services.

§ 124.503 Compliance level.

(a) *Annual level.* Except as provided in § 124.504 and § 124.511, an applicant assisted under title VI or XVI of the Act is in compliance with its assurance to provide a reasonable volume of services to persons unable to pay therefor for a fiscal year if, for the fiscal year, it provides on request uncompensated services in accordance with the requirements of this subpart at a level not less than the lesser of—

(1) Three percent of its operating costs for the preceding fiscal year, or

(2) Ten percent of all Federal assistance provided to or on behalf of the applicant, adjusted as follows: The amount of Federal assistance provided in any year shall be increased or decreased, as the case may be, by a percentage equal to the percentage change in the national Consumer Price Index for medical care between the year in which the assistance was provided or 1979, whichever is later, and the most recent year for which a published Index is available. For purposes of this paragraph, the total amount of the interest subsidy which the Secretary is obligated to pay over the life of a loan which is guaranteed or made and sold by the Secretary will be deemed to have been provided in the year in which the loan is made.

(b) *Deficit makeup.* If in any fiscal year a facility fails to meet its annual compliance level under paragraph (a) of this section, or under § 124.511, it shall make up that deficit in the following fiscal year unless an extension of time is granted under § 124.511(b)(3).

§ 124.504 Lower level of compliance.

(a) The Secretary may establish a level of compliance with this subpart for a fiscal year lower than the applicable compliance level of § 124.503 if he finds, in accordance with the applicable procedures of this section—

(1) That the applicant cannot reasonably be expected to meet the applicable compliance level because there is

insufficient need for uncompensated services in the area it serves; or

(2) That the applicant is financially unable to provide uncompensated services at the level required under § 124.503.

(b) A level of compliance for a fiscal year lower than that required by § 124.503 will not be established unless the following procedures are followed:

(1) Not later than 60 days before the close of the applicant's fiscal year, except for good cause shown, the applicant must submit to the Secretary a written request that the level of compliance applicable to it for the next fiscal year be lower than the applicable compliance level. The written request shall contain:

(i) A justification, supported by adequate documentation (including the most currently available financial data) of why granting the lower compliance level is warranted; and

(ii) The applicant's proposed budget for the next fiscal year.

(2) The applicant shall, not later than 60 days before the close of its fiscal year, publish in a newspaper of general circulation in the area served by the facility notice that it has applied to the Secretary for a lower level of compliance with the requirements of this subpart. It shall simultaneously provide a copy of such notice to the HSA for the area, which may hold a public hearing, comment to the Secretary on the level proposed, or take any other action it considers appropriate. The notice must contain the following:

(i) The amount of uncompensated services it proposes to provide in the next fiscal year;

(ii) The amount of uncompensated services it will have to provide under this subpart in the next fiscal year if a lower level of compliance is not established for the applicant under this section;

(iii) A statement that it will provide uncompensated services at the level set forth in subparagraph (2)(ii) of this paragraph until the required level of compliance is established by the Secretary under paragraph (b)(3) of this section;

(iv) A statement that any persons wishing to object to the applicant's request for a lower level of compliance may file written objections, along with any supporting materials, with the Secretary within 150 days of the date of publication of notice under this paragraph; and

(v) A statement that it will make available for inspection all materials submitted under subparagraphs (1) and (3) of this paragraph.

(3) Not more than 60 days after the close of the applicant's fiscal year the applicant shall submit to the Secretary in support of its request for a lower level of compliance, and simultaneously provide a copy to the HSA in the area, the audited financial statement which provided the basis for the report submitted under § 124.510(a).

(4) Not more than 120 days after the beginning of the applicant's current fiscal year, the Secretary will—

(i) Establish a level of compliance for the fiscal year which shall be equal to or as close to the level applicable to the applicant under § 124.503 as the Secretary finds is consistent with paragraph (a)(1) or (a)(2) of this section, as applicable; and

(ii) Notify the applicant in writing of the level of uncompensated services which has been established for the applicant for the fiscal year.

(5) Within 7 days of its receipt of notification by the Secretary under paragraph (b)(4)(ii) of this section the applicant shall publish in a newspaper of general circulation in the area it serves a notice of the level established by the Secretary for the facility for the fiscal year, and simultaneously provide a copy of the notice to the HSA for the area.

(6) From the beginning of the fiscal year for which the lower level is requested until the applicant receives notification from the Secretary under paragraph (b)(4)(ii) of this section, the applicant must provide uncompensated services at the compliance level required by § 124.503 or § 124.511.

(c) The authority to make determinations under this section will be delegated to the Administrator of the Health Resources Administration, and will not be further delegated without the approval of the Secretary.

§ 124.505 Notice of availability of uncompensated services.

(a) *Published notice.* (1) An applicant shall, no later than 60 days before the beginning of its fiscal year, publish in a newspaper of general circulation in the area it serves notice of the amount of uncompensated services which it will make available in the fiscal year, and the plan of allocation it proposes to adopt under either § 124.507(b) or § 124.507(c). It shall simultaneously provide a copy of such notice to the HSA for the area, which may hold a public hearing, comment to the applicant on the extent to which the plan will or will not meet community needs, or take any other action it considers appropriate. An applicant may revise the plan published under this paragraph based on comments received from the HSA or the public, and shall publish the plan as adopted, and simultaneously send a copy to the HSA for the area, at the beginning of the fiscal year.

(2) Where an applicant has applied for a level less than the annual compliance level for a fiscal year under § 124.504 it may include the information required by that section in the notice required by this paragraph.

(b) *Posted notice.* (1) The applicant shall post a notice in accordance with the following requirements:

(i) The notice shall be posted in appropriate areas of the facility (e.g., admissions office, business office, emergency department).

(ii) The notice shall be multilingual where the applicant serves a multilingual community. For purposes of this section, a community is multilingual if the "usual language of households" of 5 percent or more of its population, according to the most recent figures published by the Bureau of the Census, is other than English.

(iii) The notice must be printed and posted so that the heading is legible to a person with normal vision from a distance of 15 feet.

(iv) The notice shall contain substantially the following language:

FREE OR BELOW CHARGE CARE AVAILABLE

This (hospital, clinic, etc.) is required by law to give a reasonable amount of care at no charge or at less than full charge, to people who cannot afford to pay. If you feel you are not able to pay for all or part of the care you need, please contact (fill in office or person, and location) and ask for free or below charge care.

If you are not satisfied with the decision that is made in your case, you may complain to (fill in the name, title, and address of the Regional Health Administrator of the Department of Health, Education, and Welfare). If you decide to complain, your complaint must state your name and address (or the name and address of the person for whom you are writing), the name and address of the facility, the date on which the event you are complaining about occurred, and describe as precisely as you can why you think the facility's action or actions violate the law. You may be asked for further information by a representative of the Department of Health, Education, and Welfare. If you do not understand this complaint procedure, you may call the Department on the toll free number 800-638-0742 (Maryland residents: 800-492-0359).

(2) The applicant must, at its option, either—

(i) Add to the notice required by subparagraph (1) of this paragraph language stating that the facility's obligation is limited to a specified dollar volume of uncompensated services and that if the facility has, during a specified period (e.g., year, quarter, month), already provided a volume of uncompensated services sufficient to satisfy its obligation for the period, any person inquiring about such services will be given a written statement to that effect, which shall also state when additional uncompensated services will be available; or

(ii) When appropriate, post an additional notice stating that the facility's obligation has been satisfied for the current period and stating when addi-

tional uncompensated services will be available.

(c) *Individual notice.* (1) The applicant shall, in accordance with subparagraph (2) of this paragraph, provide individual written notice of the availability of uncompensated services to each person who seeks services in the facility on behalf of himself or another. The notice must:

(i) Contain the information required by paragraph (b) of this section;

(ii) Set forth the criteria applied by the applicant for determining eligibility for uncompensated services (in accordance with the income criteria of § 124.506) and receipt of such services (in accordance with the allocation plan adopted under § 124.507);

(iii) State that the applicant will make on request a written determination of whether the person will receive uncompensated services and will promptly inform the person of the determination made.

(2) The individual written notice described in subparagraph (1) of this paragraph must be provided prior to the provision of services in all cases except where the emergency nature of the services provided makes such prior notice impracticable. If this exception applies, the written notice must be provided to next of kin or to the patient as soon as practicable, and in no event later than the first rendition of a bill for the services.

§ 124.506 Eligibility criteria for identifying persons unable to pay.

(a) For the purposes of this subpart, a person unable to pay for health services is a person who falls into either of the following categories:

(1) *Category A*—Persons whose individual or family incomes, as applicable, for the 12 months preceding the determination of eligibility are not more than the current poverty income guideline of the Community Services Administration (as set forth in 45 CFR 1060.2-1 et seq.) applicable to such individual or family. The applicant shall provide uncompensated services to those persons without charge.

(2) *Category B*—Persons whose individual or family incomes, as applicable, for the 12 months preceding the determination of eligibility are greater than the current poverty income guideline of the Community Services Administration (as set forth in 45 CFR 1060.2-1 et seq.) applicable to such individual or family but not more than twice such guideline. Services to such persons must be provided, at the option of the applicant, either without charge or in accordance with a schedule of charges for services reduced from the allowable credit for such services in proportion to the relative income of the persons in Category B.

(b) In calculating annual income the applicant may use either of the following methods, as long as it uses the same method for all determinations made throughout the entire fiscal year:

(1) Multiple by four the person's income for the 3 months preceding the determination of eligibility; or

(2) Use the person's actual income for the 12 months preceding the determination of eligibility.

§ 124.50 Allocation of services.

(a) An applicant must provide its uncompensated services in accordance with a plan which sets out a method by which the facility will distribute its uncompensated services amongst persons unable to pay. The plan specified in paragraph (b) of this section must be used, whether or not published as required by § 124.505, unless the applicant adopts a plan under paragraph (c) of this section and publishes that plan in accordance with § 124.505.

(b) Unless a plan is adopted under paragraph (c) of this section, an applicant shall divide the amount of its annual uncompensated service obligation under this subpart into four approximately equal quarterly allocations and provide all services of the facility to the eligible persons who first request such services, beginning with the first day of each quarter and continuing until the allocation for the quarter is exhausted.

(c) An applicant may adopt and use a plan for allocation of its uncompensated services other than that described in paragraph (b) of this section only if the plan provides—

(1) There will be some distribution of uncompensated services throughout the applicant's fiscal year (i.e., that not all uncompensated services will be provided in the first 6 months of the year);

(2) There will be some services provided without charge to individuals in income category A (§ 124.505(a)); and

(3) All persons coming within the plan will be provided uncompensated services until the applicant's obligation for the period has been satisfied.

§ 124.508 Determinations of eligibility.

(a) *Eligibility determination requirement.* (1) In determining the amount of uncompensated services provided by an applicant, there shall be included only those services provided to an individual with respect to whom the applicant has made a written determination of eligibility. A determination of eligibility will be considered to be a written determination within the meaning of this section only if it states that uncompensated services at no charge or at a specified charge less than the allowable credit for the services will be furnished the patient, and specifies the date on which the determination was made, the income of the person unable to pay as determined in accordance with § 124.506, and the date on which such services were or will be first provided to the patient.

(2) The determination of eligibility shall be made promptly on request and the determination, or a copy of it, shall be furnished to the patient promptly. The determination, or a copy of it, shall be retained by the applicant for 5 years.

(b) *Reasons for denial.* The applicant must provide each person who requests uncompensated services and is denied them, in whole or in part, a written statement of the reasons for such denial when the determination of ineligibility is made.

(c) *Verification.* The applicant may, as a condition to providing uncompensated services to any individual, require any information necessary to substantiate the individual's eligibility for such services, consistent with other applicable legal requirements.

§ 124.509 Exclusions from uncompensated services.

The following shall be excluded from the computation of uncompensated services provided by an applicant:

(a) Any amount which the applicant has received, or is entitled to receive, from a thrid party insurer or under a governmental program, except that if the person to whom the services were provided refused to take any reasonable action necessary to perfect his entitlement to those benefits, the facility may at its option count the services provided as uncompensated services.

(b) Any amount in excess of the payment which the applicant has received, or is entitled to receive, from a third party insurer or under a governmental program (e.g. medicare or medicaid) where the applicant has agreed or is otherwise required to accept such payment as payment in full for the services rendered;

(c) Any amount attributable to services provided 96 hours or more following notification of the applicant by a professional standards review organization that such services have been disapproved under section 1155(a)(1) of the Social Security Act (42 U.S.C. 1320c-4); and

(d) Any amounts for which reimbursement would be available under a governmental program (e.g. medicare or medicaid) in which the applicant, although eligible to do so, and required by § 124.603(b)(1)(ii) to do so, does not participate.

§ 124.510 Reporting requirements.

(a) Not later than 60 days after the close of its fiscal year, unless a longer period is approved by the Secretary

for good cause shown, an applicant shall submit to the Secretary—

(1) A reporting form, prescribed by the Secretary, which will include the following information:

(i) The facility's budget for its current fiscal year, including the amount of uncompensated services which the applicant proposes to provide in the fiscal year;

(ii) The facility's operating expenses, total patient revenue, the amount claimed for reimbursement under Titles XVIII and XIX of the Social Security Act, and the amount of uncompensated services provided in the preceding fiscal year, based on an audited financial statement for that year, and the compliance option selected and the amount of uncompensated services required to have been provided in the preceding fiscal year under § 124.503, § 124.504 or § 124.511;

(iii) The date on which the notice required by § 124.505(a) was published and sent to the HSA for the area, and the name of the newspaper which printed the notice;

(iv) If the amount of uncompensated services provided by the applicant in the preceding fiscal year was lower than the level required for the applicant under, as applicable, § 124.503, § 124.504 or § 124.511, an explanation of why the required level of compliance was not met and an affirmative action plan for meeting the level of compliance for the current fiscal year required under § 124.503, § 124.504, or § 124.511, as applicable. The affirmative action plan shall provide for notice and outreach to encourage utilization of the uncompensated services, and shall provide for modifications, if appropriate, in the allocation plan; and

(v) Other information which may be prescribed by the Secretary.

(2) Such other information relating to its compliance with the requirements of this subpart as the Secretary may request in writing.

(b) The budget, audited financial statement, published notice, and any other documents from which the information required to be reported under paragraph (a) of this section was obtained, shall be made available to the public for inspection and retained by the applicant for 5 years. The applicant shall promptly provide such documents to the Secretary upon request.

(c) Not later than 10 days after service on it of a summons and/or complaint, the applicant shall notify the Regional Health Administrator for the Region of the Department of Health, Education, and Welfare in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart.[1]

§ 124.511 Investigation and enforcement.

(a) *Investigations.* (1) The Secretary will:

(i) Periodically investigate the compliance of applicants with the requirements of this subpart pursuant to the authority of section 1612(c) of the Act. Such investigations include, but are not limited to, investigations done in response to information received pursuant to § 124.510(a) which indicates that the applicant failed to meet the level of compliance applicable to it in the preceding fiscal year or otherwise with the requirements of this subpart.

(ii) Investigate the compliance of applicants with the requirements of this subpart in response to complaints properly submitted under section 1612(c) of the Act. A complaint will be considered to have been filed with the Secretary on the date on which the following information is received in the Office of the Regional Health Administrator for the Region of the Department of Health, Education, and Welfare in which the facility is located:

(A) The name and address of the person making the complaint or on whose behalf the complaint is made;

(B) The name and address of the facility;

(C) The date on which the event complained of occurred, and

(D) A statement of why the complainant considers the applicant's action or actions violate the requirements of this subpart.

(2) When the Secretary investigates an applicant under subparagraph (1) of this paragraph, the applicant shall make available to the Secretary any documents, records and other information concerning the facility's operations as they relate to the requirements of this subpart which he requests.

(3) Section 1612(c) of the Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within 6 months from the date on which the complaint is filed, the person filing it may bring a private action to effectuate compliance with the assurance.

(b) *Enforcement.* (1) If the Secretary finds, based on his investigation under paragraph (a) of this section, that an applicant did not comply with the requirements of this subpart he may take any action authorized by law, including but not limited to voluntary agreement or a request to the Attorney General to bring an action against the applicant for specific performance, to secure such compliance.

(2) If the Secretary finds, based on his investigation under paragraph (a) of this section, that an applicant did not in any fiscal year after (the effective date of these regulations) meet the level of compliance required of it under this subpart, he—

(i) Will set a level of compliance for the applicant for the current fiscal year which shall be equal to the level applicable under § 124.503 plus the amount by which he finds that the applicant failed to meet the level of compliance applicable to it in such prior fiscal year, or he will add such amount to the level of compliance to be set for the next fiscal year, as he determines to be appropriate; and

(ii) Shall promptly notify the applicant in writing of such higher level. The applicant shall promptly publish in a newspaper of general circulation in the area served by it notice of the level established under this paragraph and shall promptly provide a copy of that notice to the HSA for the area.

(3) An applicant that receives a notice of a higher level of compliance under this paragraph may, within 20 days of receipt of such notice, request that the period within which the deficit must be made up, be extended, or, if subject to § 124.501(b)(1), that it be given a longer period than there provided to make up the deficit in services. If the request for an extension is approved by the Secretary, he may establish such deficit makeup period as he determines to be appropriate. If necessary, the period of applicability of this subpart shall be extended accordingly.

§ 124.512 Agreements with State agencies.

(a) Where the Secretary finds that it will promote the purposes of this subpart, he may enter into an agreement with a State agency able and willing to do so under which the State agency will assist him in the administration of this subpart in the State. The agreement shall provide that the State agency will provide the Secretary with such assistance as he may request in any one or more of the following areas, as set out in the agreement:

(1) Investigation of complaints submitted under section 1612(c) of the Act;

(2) Monitoring under section 1612(c) of the Act of the compliance of facilities within the State with the requirements of this subpart;

(3) Review of requests submitted by applicants within the State under § 124.504;

(4) Review of reports submitted under § 124.510

(b) A State agency may use funds received under section 1525 of the Act to pay for expenses incurred in the course of carrying out an agreement

[1] The addresses of the Regional Offices of the Department of Health, Education, and Welfare are set out at 45 CFR 5.31.

entered into under paragraph (a) of this section.

2. A new Subpart G is added to 42 Code of Federal Regulations, Part 124, to read as follows:

Subpart G—Community Service

Sec.
124.601 Applicability.
124.602 Definitions.
124.603 Provision of services.
124.604 Reporting requirements.
124.605 Investigation and enforcement.
124.606 Agreements with State agencies.

AUTHORITY: Secs. 215, 1525, 1602(6), Public Health Service Act as amended; 58 Stat. 690, 88 Stat. 2249, 88 Stat. 2259; 42 U.S.C. 216, 300m-4, 300o-1(6).

Subpart G—Community Service

§ 124.601 Applicability.

The provisions of this subpart apply to every applicant who has given an assurance that it will make the facility or portion thereof assisted under Title VI of the Public Health Service Act (42 U.S.C. 291 et seq.); or Title XVI of the Public Health Service Act (42 U.S.C. 300o et seq.) available to all persons residing (or employed, for Title XVI assisted applicants) in the territorial area it serves. This assurance is referred to herein as the "community service assurance."

§ 124.602 Definitions.

As used in this subpart, the following terms have the following meanings:

"Act" means the Public Health Service Act, as amended.

"Applicant" means an applicant for and recipient of a grant, a direct loan or a loan guarantee under Title VI or Title XVI of the Act.

"Community service" means the provision of health care services by a facility in accordance with the requirements of this subpart.

"Complaint" means a written statement submitted to the Secretary in the form and manner and containing the information prescribed under § 124.605(a)(1)(ii).

"Fiscal year" means the applicant's fiscal year.

"Secretary" means the Secretary of Health, Education, and Welfare or any officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"State Agency" means the agency of a State designated by the Secretary as the State health planning and development agency of the State under section 1521 of the Act.

§ 124.603 Provision of services.

In order to comply with its assurance that it would provide a community service, an applicant must:

(a) Make the services provided in the facility or portion thereof constructed, modernized, or converted with Federal assistance under Title VI or XVI of the Act available to all persons residing (and, in the case of applicants under Title XVI of the Act, employed) in the area served by the facility without discrimination on the ground of race, color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service in the facility, except that an applicant may deny services to persons who are unable to pay for them after its uncompensated services obligation for the appropriate period has been satisfied. An applicant will be considered to be out of compliance with this requirement if it adopts an admissions policy which has the effect of excluding persons on a ground other than those permitted under the preceding sentence.

(b)(1) Make arrangements, if eligible to do so, for reimbursement for services with:

(i) Those principal State and local governmental third-party payors which provide reimbursement for services that is not less than the actual cost of such services as determined in accordance with accepted cost accounting principles; and

(ii) Federal governmental third-party programs, such as medicare and medicaid; and

(2) Take such additional steps as may be necessary to insure that admission to and services of the facility will be available to beneficiaries of the governmental programs specified in subparagraph (1) of this paragraph without discrimination or preference on account of their being such beneficiaries.

§ 124.604 Reporting requirements.

(a) Not later than 60 days after the close of its fiscal year, unless a longer period is approved by the Secretary for good cause shown, an applicant shall submit to the Secretary—

(1) A reporting form, prescribed by the Secretary, which will include the following information;

(i) The amount of reimbursement claimed by the applicant in the fiscal year pursuant to each arrangement it has with a third-party payor described in § 124.603(b)(1) as indicated on the applicant's audited financial statement for the preceding fiscal year; and

(ii) Other information which may be prescribed by the Secretary.

(2) Such other information relating to its compliance with the requirements of this subpart as the Secretary may request in writing.

(b) The audited financial statement, an any other documents from which the information required to be reported under paragraph (a) of this section was obtained shall be made available to the public for inspection and retained by the applicant for 5 years. The applicant shall provide such documents to the Secretary upon request.

(c) Not later than 10 days after service on it of a summons and/or complaint, the applicant shall notify the regional health administrator for the region of the Department of Health, Education, and Welfare in which it is located of any legal action brought against it to compel it to comply with the requirements of this subpart.[1]

§ 124.605 Investigation and enforcement.

(a) *Investigations.* (1) The Secretary will:

(i) Periodically investigate the compliance of applicants with the requirements of this subpart pursuant to the authority of section 1612(c) of the Act. Such investigations include, but are not limited to, investigations done in response to information received pursuant to § 124.604(a) which indicates that the applicant failed to comply with the requirements of this subpart in the preceding fiscal year.

(ii) Investigate the compliance of applicants with the requirements of this subpart in response to complaints properly submitted under section 1612(c) of the Act. A complaint shall include the information required by § 124.511(a)(1)(iii) and will be deemed to have been filed with the Secretary on the date on which that information is received in the office of the regional health administrator for the region of the Department of Health, Education, and Welfare in which the facility is located.

(2) When the Secretary investigates an applicant under subparagraph (1) of this paragraph, the applicant shall make available to the Secretary any documents, records, or other information concerning the facility's operations as they relate to the requirements of this subpart as he may request.

(3) Section 1612(c) of the Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within 6 months from the date on which the complaint is filed, the person filing it may bring a private action to effectuate compliance with the assurance.

(b) *Enforcement.* If the Secretary finds, based on his investigation under paragraph (a) of this section, that an applicant has limited the availability of its services in a manner proscribed by this subpart, he may, in addition to any other action which he is authorized to take in accordance with section 1612(c) of the act, establish an affirmative action plan for the facility which

[1] The addresses of the regional officers of the Department of Health, Education, and Welfare are set out at 45 CFR 5.31.

in his judgment is designed to insure that its services are made available in accordance with the requirements of this subpart.

§ 124.606 Agreements with State agencies.

(a) Where the Secretary finds that it will promote the purposes of this subpart, he may enter into an agreement with a State agency able and willing to do so under which the State agency will assist him in the administration of this subpart in the State. The agreement shall provide that the State agency will provide the Secretary with such assistance as he may request in any one or more of the following areas, as set out in the agreement:

(1) Investigation of complaints submitted under section 1612(c) of the Act;

(2) Monitoring under section 1612(c) of the Act of the compliance of facilities within the State with the requirements of this subpart;

(3) Review of reports submitted under § 124.604.

(b) A State agency may use funds received under section 1525 of the Act to pay for expenses incurred in the course of carrying out an agreement entered into under paragraph (a) of this section.

[FR Doc. 78-30197 Filed 10-24-78; 8:45 am]

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